



Committee to Review Policing Policies

2/11/2020

Committee to Review Policing Policies Meeting

DRAFT Minutes

Fletcher Free Library

Tuesday, February 11, 2020

Committee Members Present: Officer Vinny Ross, Sgt. Rich Weinisch, Kevin Rodgers, Jim Dunn, Tom Necekas, Police Commissioner Jabu Gamache, Chuck Brewer, Chair and Police Commissioner Randall Harp, Deputy Chief Jon Murad, Melo Grant (left at 6:45 pm), City Councilor Perri Freeman, Chief of Staff Jordan Redell

Absent: Vice Chair Skyler Nash, City Councilor Joan Shannon, Carter Neubiser

Staff present: Eileen Blackwood, City Attorney

Others present: Nancy Stetson, BPD

Chair Harp called the meeting to order at 5:25 pm.

1.01 Agenda. Motion by Vinny, second by Chuck to adopt the proposed agenda

VOTING: Unanimous; motion carried.

2.01 Public Forum: No members of the public were present.

3.01 Minutes: Motion by Jim, second by Rich to approve the minutes as presented.

VOTING: Unanimous; motion carried.

4.01 Report to City Council: Chair Randall Harp displayed on screen the draft report for Committee consideration and began receiving comments. He noted that he tried to include all the recommendations in this draft but that he was intending to include in the actual report only those that received the support of 2/3 of those present, as a simple majority seemed too close to be an actual recommendation of the committee.

Jordan commented that Randall did a great job of capturing the Committee's discussions. The committee proceeded to review the draft by section.

Introduction: no comments

Use of Force: Randall noted that the report does not recommend any specific draft of a revised use of force policy to allow time for review to occur, but just includes the elements the committee believes should be considered.

Vinny: The word "continuum" is out of date in use of force now. Jon: Continuum is more a point of training, not part of a policy. Training should include different levels of resistance and different levels of force, and it might be good to reference that in the policy. Randall: There should be some policy about levels of force, so that there can be accountability for a violation of policy, not just training, if too much force is used for the circumstances. Rich: Being too specific can be a problem, as someone who is smaller and lighter might have to use more force than someone who is larger and stronger. Vinny: Requiring use of proportional (or proportionate?) force sets the policy. Jon explained the reasonable officer



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standard. Randall: That legal standard has been interpreted very loosely by the courts. Jon: The standard applied in discipline may be narrower than the legal standard. Kevin: We want flexibility so that officers have the tools they need to do their job. But we also want accountability through discipline and particularly a way to address implicit bias through early warning systems and appropriate response. Jon: These points are addressed in the proposed policy. Randall changed "continuum" to "proportional."

Vinny: Change "unnecessary" to "unreasonable." Randall: Agrees although thinks in this context unnecessary may give more flexibility. Perri: Isn't "unnecessary" broader in this context? Melo: When I see a use of force, I think, was that action really necessary, not was it reasonable? Randall: There could be actions that are unnecessary but reasonable. Do they exist, and if so, do we want to discipline officers for an action that is unnecessary but reasonable? I might not have to give you a ride home, but it would be nice. Rich: It's not always clear what is necessary, and a necessary standard will be difficult for officers to apply. Perri: I prefer "necessary." Melo: If something wasn't unreasonable, we wouldn't be here. I lean toward "unnecessary." Randall: I'm concerned with determining what is necessary to stop a fight. It seems difficult to determine.

Jim: I'm thinking of a situation in the past when an officer was confronted by a car coming at him, and it would have been reasonable to use force, but he decided it wasn't necessary. We thought that was good behavior. Jon: The policy of the department is not to shoot, although it is lawful to do so. That's an example of where policy is more restrictive than the law. Jim: Reasonableness is the standard, but isn't there also a reason to weigh necessity? Kevin: Are there times when the internal use of force team says that was reasonable, but I wouldn't have done that. Jon: Yes, and that situation is elevated to management. Chuck: Should we just look the words necessary and reasonable up in the dictionary to decide which is more appropriate? Randall: No, the dictionary is not in context. Rich: The policy about a moving vehicle allows an officer to use force if their safety is at risk. He was acting on the basis of unreasonable.

Randall changed the draft to "unnecessary/unreasonable" so when the policy is updated, this distinction should be considered. The idea is not to be bound by the legal definition of reasonability, which has been interpreted more broadly than this committee is comfortable with. Perri: The department has always been able to make stricter expectations but has defaulted to the legal standard. Randall: If the chief says the courts say it's reasonable, the commission would likely say ok, we're bound by that. So, if we want something different, we need it in policy. Jon: We've had situations where we have disciplined even when court has not found a legal violation.

Jim: On p. 2 of the Campaign Zero Policy, it uses the words objectively reasonable, necessary, and proportional. There are situations where the use of force is legal, but not necessary or reasonable. Perri: The Campaign Zero policy uses necessary throughout. Randall: No jurisdiction has adopted that policy verbatim. Jim: If there's another alternative, then it's not necessary. Perri: The Camden policy also uses the word "necessary." Randall: Camden defines "necessary" in its core principle 2, section 10. Rich: Often not using a low level of force can lead to greater force later. Grabbing someone's wrist who is resisting handcuffing is a use of force and is reported as such. Jim: I'm not sure that it's not necessary to grab his wrist if he's resisting arrest, so the necessary language wouldn't necessarily require you to wait for him to comply. Melo: We are going around in circles. We're trying to fix something where we didn't follow the policies and procedures.

Randall: Shall we vote on whether to use unreasonable v. unnecessary, or shall we say that the Committee encourages those creating the final policy to pay particular attention to these two words and that the policy should be clear that reasonableness is not tied to legal standard? Kevin: What if we propose the language from Camden but leave out the "only as a last resort" language?

Motion to accept Randall's language (encouraging particular attention to the words unreasonable or unnecessary and to be sure that reasonableness is not tied to the legal standard) by Tom, second by Perri.

VOTING: Unanimous. Motion carried.

Community oversight: Randall: What kind of oversight model do we want to recommend?



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Jim: Jim reviewed his proposed process (in an email from him). Every use of force case should be brought to the Commission, even if there is no complaint. Timeliness should be in the policy. The complainant should be able to appear before the Commission and describe the incident and present witnesses. After completion of internal investigation, the department should meet with the Commission. The Commission will then have heard both sides, and it the department can then take the Commission's point of view into account. Commissioners can express their individual disagreement. The Commission should then respond to the complainant. Also, the Commission should hold meetings around the city, Commission doesn't engage the community much and needs to invite the community in more. Randall: This proposal adds inviting complainants to present, commission is traveling around, commission is notifying complainant after decision. This keeps the discipline decision with the chief. Jim: yes.

Kevin: All of my proposed modifications address the same issues—the Commission being able to get information independently. In 2018, there were 190 use of force incidents, so there should be a person designated by the Commission to contact individuals to hear their complaints. The Commission needs independent legal counsel that doesn't represent the City of Burlington, but independent community interests.

Vinny: The union would have trouble with disclosure of discipline to the individual complainant. Rich: We have to hold the public accountable to some degree and they have to attend. Jon: If every minor use of force were to come to the Police Commission, this would exponentially increase Commission time. Every case would be unreasonable. Jim: Means only those use of force cases where there is a complaint. The review of all the cases would be very general--offering to someone to come in and tell the Commission how did it impact you, what's your understanding of what happened? Jordan: I don't think an independent Commission with independent counsel would be feasible in our small community.

Randall: The matters that raised the greatest concern were not based on a situation where the Commission did not have enough facts/information. I can't recall any situation where if information came out later, we would have decided differently. So, it doesn't seem that the problem is that the Commission doesn't get enough information. Kevin: Our current system is that the ACLU is the legal counsel that sues the City. We don't have anyone speaking for the community or the person who was injured. Is anyone calling the complainant and talking to them? Jon: I do. I ask them about their side of the story, but no one outside of the Department does. Jim: Agrees that the internal investigation is not incomplete or trying to keep anything from the Commission. Randall: The decisions have been improved when someone has spoken to the complainant.

Kevin: The national recommendations are that there should be an investigator attached to the Commission that would have the authority to investigate. Randall: Right now the Commission sees body camera footage and reports. They aren't getting additional information from the complainant, but that wouldn't have changed anything. But we certainly could ask the complainant for information.

Tom: I agree with Jim's suggestion. Also, could we add a statement to the citizen complaint form that lets complainants know that they have a chance to meet/talk with the Commission? Jon: I agree.

Perri: I would recommend a different model. How do we decide what goes in the report? Randall: I was hoping that discussion would resolve some of the issues. Perri: I have no problem with saying this is my separate opinion.

Jim: I started out thinking we need something independent, but these exist in larger cities with more money. What brought us here are anomalies in my 30 years here. I think opening this so that the Commission hears directly from the individual is good. Beyond that, it would require a higher level—cost, etc. But I recognize this doesn't provide the independence of a fully independent oversight body. Jon: I spoke at a conference on civilian oversight. We could send some commissioners to that conference, and they would learn a lot. Randall: I've read hundreds of pages of materials on the subject. For a city of Burlington's size and resources, this model works.

Randall: Proposes that the Committee consider 2 options: Should 1) the commission have more power to discipline or 2)



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the commission stay in an advisory capacity? Perri and Kevin: Ask for yeas and nays for each option separately. Jim: I can't agree to keep the status quo. It depends what you mean is included in the advisory capacity. Randall: The first question is the overall model—making decisions or advising the department. Perri: Doesn't it make sense for everyone to move the system they want, and then vote on whether to move it forward?

Motion by Rich for the Committee to do the process as Randall has proposed—agree on whether the Commission should be decision-making v. advisory on officer discipline. Second by Vinny. VOTING: Unanimous. Motion carried.

Motion by Perri that Committee adopt the recommendation for option 1—that the Commission have disciplinary decision-making authority. Second by Kevin.

VOTING: 1 in favor, remainder against. Motion failed.

Motion by Kevin that charter changes be made and procedures be modified to allow for independent legal counsel for the Commission, as needed, along with the power to gather data as needed and have other investigative resources. Second by Perri.

VOTING: 3 in favor, 6 opposed, 2 abstained. Motion failed.

Motion by Rich to incorporate Jim's suggestion of adding to the complaint form an option of speaking to the Commission as a whole or an individual commissioner. Second by Jordan. Kevin: Is voting against because this doesn't go far enough.

Randall: Encourage BPD and Commission to make sure complainants know the Commission is a resource for them. Rich and Jordan agree that is a friendly amendment.

VOTING: 10 in favor, 1 opposed. Motion carried.

Motion by Jim to encourage the Commission to go into the community and educate community about their role and oversight function. Second by Jabu

VOTING: Unanimous. Motion carried.

Motion by Tom that at the end of the process, the Commission respond to the complainant informing them whether there was or was not discipline. Rich seconded.

VOTING: Unanimous. Motion carried.

Other Recommendations

A. Motion by Jordan to include recommendation A in the report as written. Second by Tom.

VOTING: 7 in favor, 3 opposed, 1 abstained. Motion carried.

B. Discussion: Clarify that this refers to an existing BPD employee and be sure it doesn't imply that employees are violent.

Motion by Jordan to include recommendation B in the report but to end with "in order to ensure that there is additional screening at the hiring stage" and to add "a BPD employee with training in DV, such as the DV Prevention Officer." Rich seconded.

VOTING: Unanimous.





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C. Motion by Kevin that BPD engage in proactive listening sessions to hear people's concerns and develop a plan for responding to them. Perri seconded.

VOTING: 6 in favor, 5 opposed. Motion carried (but see below, motion did not receive sufficient votes to be included in the report).

Motion by Vinny that as Chair recommended at the beginning of the meeting, only recommendations that receive 2/3 vote of those present should be in the report. Rich seconded.

VOTING: 6 in favor, 4 against, 1 abstention. Motion carried.

C. Motion by Jordan to include recommendation C as written. Second by Vinny.

VOTING: 9 in favor, 1 opposed, 1 abstained.

D. Motion by Jordan to include recommendation D as written. Second by Chuck.

Kevin moved to amend to add "and to incentivize BPD officers living in the City." Jim seconded. Jordan: I support, but this would add to challenges for recruitment. Randall: I see this as a different issue than hiring.

VOTING ON AMENDMENT: 4 in favor, 7 opposed. Amendment failed. Original VOTING ON MAIN MOTION: Unanimous.

E. Motion by Perri to include recommendation E as written. Second by Kevin. Kevin suggested replacing x with 95, and Perri agreed.

VOTING: 1 in favor, 10 opposed. Motion failed.

F. Motion by Jordan to include recommendation F as written. Second by Jon. Jabu is a big fan of the Denver model and would like to add "potentially in line with the Denver model." The movant and seconder agreed.

Motion to amend by Kevin proposed that "look for ways to expand" change to "develop a plan." Second by Tom.

VOTING ON AMENDMENT: Unanimous. Motion carried.

VOTING ON MOTION AS AMENDED: unanimous. Motion carried.

G. Motion by Kevin to include recommendation G as written. Second by Perri. Jim: His suggestion about the Commission getting out in the community was in part to address this. Jon: The National Police Foundation is willing to do more surveys, if needed. BPD received 1700+ responses, 70% positive on the recent survey.

VOTING: 8 in favor, 2 opposed, 1 abstained. Motion carried.

H. Motion by Perri to include recommendation H as written. Second by Tom.

Motion to amend by Jim deleting "members of the public" and adding that policy be created "and." Second by Perri

VOTING ON AMENDMENT: 10 in favor, 1 abstention. Motion carried.

VOTING ON MOTION AS AMENDED: 10 in favor, 1 abstention. Motion carried.





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I. Motion by Perri to include recommendation I as written. Second by Tom.

Motion to amend by Jordan to remove "is concerned" up to "and so." Second by Vinny.

VOTING ON AMENDMENT: 8 in favor, 1 opposed, 2 abstained. Motion carried.

VOTING ON MOTION AS AMENDED: 10 in favor, 1 abstention. Motion carried.

Motion by Jordan to authorize the chair to make changes to the draft report reflective of the Committee's discussion tonight and present it to the Council as the report of the Committee. Second by Vinny.

Motion to amend by Kevin that wherever a vote was less than unanimous, a minority report is authorized and the Committee asks the chair to explain the discussion. Second by Perri. Vinny: I would be uncomfortable with a minority report. Rich: I am opposed because it is against the point of the committee. Perri: I am opposed to making the chair write a minority report, given the short time. Jordan: The minutes will show the discussion.

VOTING ON FIRST AMENDMENT: 1 in favor, 10 opposed. Amendment failed.

Motion to amend by Tom to add that last time we discussed adding to use of force that officers be trained to be aware of intergenerational trauma or for marginalized groups and effects on their response to police, and that should be added to the report. Second by Perri. Vinny: I think adding specifics about race in training would not be positive. Jon: I agree that explicitly asking officers to assume that a person of a minority race would suffer trauma from any use of force is problematic. We do take into account when we know that someone has suffered a trauma. Randall: I am not comfortable writing language on this at this late date.

VOTING ON SECOND AMENDMENT: 4 in favor, 7 opposed. Amendment failed.

VOTING ON MAIN MOTION: 8 in favor, 2 abstentions. The motion carried.

5.01 Motion to adjourn by Jordan, second by Vinny. Jordan noted that in doing so, it was time to celebrate the Committee's work and thank the chair for all of his work.

VOTING: Unanimous.

The meeting was adjourned at 8:50 pm.