



# Committee to Review Policing Policies 2/4/2020

## Committee to Review Policing Policies

### Minutes

### Community Room, One North Avenue

Tuesday, February 4, 2020

**Members Present:** Chair and Police Commissioner Randall Harp, Tom Neceskas, Melo Grant, Jim Dunn (left 7:29), Kevin Rodgers (left 7:22), Sgt. Richard Weinisch, Officer Vinny Ross, Deputy Chief Jon Murad, City Councilor Joan Shannon (left at 7:01), Mayor's Chief of Staff Jordan Redell, City Councilor Perri Freeman, Carter Neubiser (by phone, left at 7:13), Police Commissioner Jabulani Gamache

**Members Absent:** Vice Chair Skyler Nash, Chuck Brewer

**Staff Present:** Assistant City Attorney Joy Hovestadt

**Others Present:** Trish O'Kane, Cassandra Stirling, Sgt. Brian DiFranco, Lt. Matt Sullivan

Chair Randall Harp called the meeting to order at 5:24 p.m.

1.
  - i. **Agenda**

Motion by Vinny Ross, second by Richard Weinisch to adopt the proposed agenda.

**VOTING:** Unanimous; motion carried.

### 2.01 Public Forum

Trish O'Kane commented on recent developments regarding the social media accounts of the Deputy Chief and comments made on those accounts, expressed a desire for more civilian oversight.



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### 3.01 Approval of Minutes

Motion by Vinny Ross, second by Jim Dunn to approve the minutes of 1/30/20 as presented.

**VOTING:** Unanimous; motion carried.

### 4.01 Role of the Police Commission

Randall outlined three possible roles for the Police commission for discussion:

1. Hands off role, (status quo)
2. Maintain the commission's current role in discipline but increase the Commission's capacity to do oversight, pass information to City Council and stakeholders, and get information. Want some requirement for what information Commission will see, and what info they can pass along to other stakeholders, better defined procedure for getting and transmitting information (Increased Visibility).
3. Give commission more power to investigate, propose discipline, and impose discipline. More expansive view of disciplinary powers and role.

Randall notes that all changes would need to go through collective bargaining, and asks what committee members think would be appropriate.

Joan comments that the City Council delegates power to the Police Commission and is open to hearing from the Commission more often. Most of the communication about what City Council wants to hear about generally comes from City Attorney it would be helpful to clarify with City Attorney what communications City Council wants to see. Would have benefited from hearing sooner about some things. The City used to have more commission based government, but moved away from that.

Jordan commented a preference for option 2 and a better defined role for the Commission beyond an advisory capacity. Need to clarify and define roles and responsibilities.

Carter commented that there is a need for citizen oversight with disciplinary and investigatory powers. Any discipline or discussion of discipline of a leadership position should be brought to the Commission. Need accountability and transparency to build community trust.

Randall urged Committee members to avoid the word oversight whenever possible.

Kevin commented on the current Commission role in use of force incidents or complaints and noted that there is no current procedure for the Commission to approach the City Council as a Commission.

Randall commented that the Commission can't divulge info from executive sessions. Individual commissioners can talk to City Council.

Jim commented that the current commission could be structured to achieve a perception of independence in the current situation. Noted that recently people were going to the City Council looking for oversight because of the perception that



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the Commission is not independent from the Police Department. Commented that disciplinary decisions can't be turned over to a civilian committee, and it is not the norm to delegate that responsibility.

Jordan agreed with Jim it is not appropriate for volunteer body to make final decision on complex discipline employment decisions.

Richard commented that he was leaning towards option 1, the process currently in place works if people know the process. Noted that there is a lack of public attendance and involvement at Committee and Commission meetings.

Perri expressed support for the third option. Its benefits are increased accountability and transparency, and oversight and authority. Commission should have independence from the Police Department. Recognizing the City's funding limits an option would be to modify a model from a larger municipality. Commission should have disciplinary power rather than the Police Department policing themselves.

Jon expressed support for aspects of 1 and 2. Suggested taking the model we have and codifying it to insure transparency in how information is transmitted from the Police Department to the commission. Expressed concern about the cost of creating a new body for a small number of incidents.

Melo commented that perception is important and we need the community to trust the police for police to be effective. Supports model 2, and notes that more could be done than currently is in regards to transparency, certain things need to be communicated to the City Council for increased transparency. Interested in 3 but it would take time and doesn't believe that proposing to give the Commission disciplinary power would be well received.

Vinny commented that the BPOA would be okay with 1 or 2, but not okay with the Commission having disciplinary, decision making, or investigative authority. More transparency is good, and makes it easier to get and share information.

Randall will draft recommendations for the next meeting.

### **4.02 Use of Force**

Jon introduced updated changes to current policy.

Randall discussed Camden's policy and expressed that the proposed policy falls short. Wants to include explicit articulation that use of force should be last resort.

Jon discussed that there are times when force can be used without exhausting all other options as a safer and faster way to resolve a situation, but deadly physical force should explicitly be a last resort. It is unclear what "last resort" means in practice,

Randall asks about whether force can be used just to prevent a person from resisting or fleeing in the future.

Jon notes that our current policy states that force has to be for lawful ends, listed in the statutes.

Kevin likes Camden's policy that flight from an officer doesn't qualify someone as assailant.

Richard comments that an officer can't lawfully top someone without a legal reason. The policy is assuming that there is a legal presence in the first place.



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Tom asked whether someone meeting a description of a recent crime suspect is sufficient for police to detain someone or use force.

Richard responded this would not be sufficient for a stop absent other circumstances. Jon added that a witness identification would be sufficient to stop someone.

Tom asked whether the character of a crime matters for use of force. Richard said yes and made the distinction between a misdemeanor where a citation was issued and a felony.

Randall asked whether anything in the draft use of force policy affirmatively requires de-escalation when possible. Jon points out that it does on page 1 and throughout.

Randall notes that the term "reasonably prioritize" in II.C. doesn't mean that de-escalation is required whenever possible. Requirement to deescalate should be in the philosophy section. Suggests using Camden core principal 2.7.

Jon suggests a solution of changing "prioritize" to "use."

Jim comments that there should be more of a directive along with judgment.

Randall asks how the draft policy gives the police department more resources to discipline an officer who used force when other options were available, even when it was lawful use of force.

Jon responded that it would be a matter of the Chief having additional language to say that use of force was not reasonable in a certain situation. The policy gives that tool but allows for an objection to that determination.

Joan comments that the committee should focus on articulating a goal by the end of the meeting and identify topics for more discussion.

Kevin comments that there is too much latitude for implicit bias if a document is not specific enough. Expresses concerns about bias in police reports and notes solid data of racial disparities in policing.

Carter agrees with what Kevin and Randall said that Camden's language is stronger, less wiggle room. Does the draft policy make clear that all modes of escalation are exhausted before use of force? Language is important. People in the community don't trust leadership right now, want less latitude.

Jim comments that the Committee should focus on what they want to see in a policy, philosophy, approach. Make sure committee's objective are addressed rather than this committee trying to wordsmith.

Randall agrees. He notes that he is asking questions because it seems like BPD wants de-escalation but does not define the relationship clearly enough. Not enough tools for the department to deal with situations that have arisen in the past.



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Jon explains that close to 100% of officers have gone through de-escalation.

Melo comments that this is good to hear, doesn't want de-escalation to seem to be optional unless not safe to do so, officers should have to explain their decisions.

Joan: It sounds like people are more comfortable with the Camden language that de-escalation should be used unless not reasonably safe to do so. Use reasonable language at the end.

Jon comments that the words "feasible" and "reasonable" are not all that different in this context. Doesn't object to the use of "unless not reasonably safe to do so."

Perri gave an example of model language from campaign zero (best practices policy), instead of the reasonably prioritize language the term "must use" should be used in conjunction with de-escalation.

Richard states that this language would need the caveat of "when safe to do so."

Tom: broadly agrees with philosophy, policy should be restrictive as possible, use force in as limited circumstances as possible.

Kevin: likes Camden's statement better because it doesn't use "reasonable." That language implies the reasonableness of the person making the decision to use force, the policy should have a standard for use of force.

Randall: by next week the Committee should endorse a direction for revisions to use of force policy. Joan comments that at the next meeting the committee will be reviewing the report which will be circulated prior to the meeting.

Kevin asks officers if substituting the Camden language discussed by the committee (core principal 2.7 and 10) would affect officer safety.

Vinny and Richard note that based on the previous discussion 2.7 would not. As to 10 there are times when lower level uses of force are appropriate to not let a situation escalate.

Jon again discusses that using the "as a last resort" language is unclear. There are situations where the best option may be to resolve quickly with low level use of force.

Randall comments that the goal is not to second-guess officer decisions, but if an officer does not take the opportunity to deescalate whenever possible, the department needs resources to say they did something incorrect if bad judgment was in use of force decision.

Kevin notes that implicit bias may drive judgment in use of force.

Jon comments that hypothetical future opportunity for de-escalation is not enough when you could resolve with low level force. Use of force determinations are based on the situation, level of threat, etc.

Randall comments that Camden says its policy is an effort to reach a higher standard than Graham v. Connor. Does the draft policy go beyond that standard?



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Jon: Yes.

Melo comments on the historical background on police interactions with communities of color and how these can be a source of resentment. This historical context should be additional factor in addressing implicit bias.

Randall suggests including that officers should be aware of implicit bias.

Richard questions how bias would be shown.

Randall comments that these documents are internal and external facing. They should show the standard that the Department holds its officers to. Include language about implicit bias.

Tom: history of racism is a factor officers should consider. Officers should not use race to determine how to respond to a situation, just be mindful of history when determining force.

Richard questions whether that would be treating people differently based on race.

Kevin: DD5.03 could be strengthened to supervise use of force.

Jim: maybe reference in the use of force policy that officers will have implicit bias training. Officers should be aware of this training in use of force determinations.

Jon: trauma such as marginalization is already a component of police interactions with people in the City but these factors can only be known when you have that information.

Melo: comments about being concerned about implicit bias, and would like more information about the training and what is involved.

Jon gives some examples of training.

Richard comments that the Fair and Impartial Policing Policy would be a better forum for taking race into consideration.

Jabulani: Melo is saying that officers should be aware going into a situation of accommodating feelings people might have about them. De-escalation is helpful as far as putting people at ease.

Randall comments that policy doesn't replace officer training.

Kevin wants to make sure there is no racial disparity in use of force.

Vinny suggests that we bring projector for next time. Jordan will work on it.

Richard requests that members bring any documents they plan to reference.

Kevin comments that the agitated delirium language in 5.05 should be updated as soon as possible. Will make proposal in writing.



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### 4.03 Other Recommendations

No comments. Randall will follow up with members individually.

### 4.04 Next Meeting Agenda Items & Date

Next week's meeting (2/11/20) is currently scheduled to be at the library at 5:15 pm. Location may change.

Agenda, draft report and further discussion.

### 5.01 Adjournment

Motion by Richard, second by Perri to adjourn.

VOTING: Unanimous.

The meeting was adjourned at 7:32 pm.