



Joint Committee on Police Oversight Meeting Agenda - Wednesday, October 18, 2023, 7:00 PM, REMOTELY via ZOOM

When: Oct 18, 2023 07:00 PM Eastern Time (US and Canada)
Topic: Joint Committee on Police Oversight Meeting

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1. Agenda

Subject	1.1. Motion to amend/adopt agenda
Meeting	October 18, 2023 - Joint Committee on Police Oversight Meeting Agenda - Wednesday, October 18, 2023, 7:00 PM, REMOTELY via ZOOM
Category	1. Agenda
Department	
Type	
Recommended Action	

2. Adopt Draft Minutes

Subject	2.1. Adopt Draft Minutes
Meeting	October 18, 2023 - Joint Committee on Police Oversight Meeting Agenda - Wednesday, October 18, 2023, 7:00 PM, REMOTELY via ZOOM
Category	2. Adopt Draft Minutes
Department	Council and Board
Type	
Recommended Action	

3. Public Forum

Subject	3.1. Verbal Comments
Meeting	October 18, 2023 - Joint Committee on Police Oversight Meeting Agenda - Wednesday, October 18, 2023, 7:00 PM, REMOTELY via ZOOM
Category	3. Public Forum
Department	Council and Board
Type	

4. Councilor Discussion and Review of Vital Questions

Subject	4.1. Councilor Discussion and Review of Vital Questions
Meeting	October 18, 2023 - Joint Committee on Police Oversight Meeting Agenda - Wednesday, October 18, 2023, 7:00 PM, REMOTELY via ZOOM
Category	4. Councilor Discussion and Review of Vital Questions
Department	Council and Board
Type	
Recommended Action	

5. Adjournment

Subject	5.1. Motion to adjourn
Meeting	October 18, 2023 - Joint Committee on Police Oversight Meeting Agenda - Wednesday, October 18, 2023, 7:00 PM, REMOTELY via ZOOM
Category	5. Adjournment
Department	Council and Board
Type	
Recommended Action	

ORDINANCE and CHARTER CHANGE JOINT COMMITTEE

Tuesday, October 3, 2023

Remote via Zoom

DRAFT MINUTES

Members Present: Councilor Traverse (Ordinance Committee Chair), Gene Bergman (Charter Change Committee Chair), Councilor Carpenter, Councilor Hightower, Councilor Shannon, Councilor Doherty

Staff Present: Joseph Dempsey (City Attorney's Office Staff), Josh Diamond (Outside Counsel), Jordan Redell (Mayor's Chief of Staff)

Others in Attendance: Melo Grant (City Councilor), Shakuntala Rao (Police Commission), Mary Cox (Police Commission), Jake Schumann, Amy Malinowski, Sharon Bushor, Jaco Schiller

Meeting called to order at 7:05 PM.

1.0 Agenda

Motion to adopt/amend agenda

Motion to Adopt the Draft Agenda.

Motion by Councilor Carpenter, Seconded by Councilor Traverse

Final Resolution: Motion Passes

Yes: Unanimous

2.0 Adopt the Draft Minutes from September 25

Motion to Adopt Minutes with an amendment to indicate Councilor Bergman supports having high-level infractions be investigated by a part of the Police Commission.

Motion by Councilor Carpenter, Seconded by Councilor Traverse

Final Resolution: Motion Passes

Yes: Unanimous

3.0 Public Forum

Amy Malinowski: I want to make sure there is a lot of input from others affected by policing. Maybe there could be an NPA tour by councilors or something similar.

Sharon Bushor: I want to speak in support of the proposals from councilors Carpenter and Hightower. Having appeals go to the HR Committee makes a lot of sense to me. I feel that if there is a conflict around discipline between the Chief and the Commission then having the HR Committee be the mediator would be appropriate. Having a few members with HR expertise would be helpful for the whole Commission.

Jake Schumann: I sent some comments to the Committee via email. Our feedback mechanisms should be accessible to everyone. Officers should have paper forms that they can give to people to help make a complaint/offer feedback. A big question is how to hold appointed officials responsible if they don't follow all of the policies set in place.

Melo Grant: We are spending too much time on discussing the appeals process as it is very rare. We had one appeal and everyone thought it went well. We should spend more time on oversight and accountability.

Shakuntala Rao (Police Commission): Commissioners do have an interest in remaining the disciplinary appeals body. Commissioners generally wanted more concrete, developed proposals before they offer opinions on each.

Mary Cox (Police Commission): One of the issues that remains is that the current mediator between the Commission and the Chief if there is a disciplinary disagreement is the Mayor. This has not worked well. Given the rarity of deaths or grievous injury, I think it would be helpful to have an ad-hoc committee with professionals from the Howard Center or other outside organizations weigh in. The composition of this hypothetical committee could adjust based on the circumstances of the incident.

4.0 Councilor Discussion and Review of Vital Questions

Councilor Carpenter asked the Police Commissioners present what they think about having the Commission have the power and budgeting to investigate incidents on their own. Commissioner Rao said that the Commission wants a monitor to help with oversight, but would need more support to have any investigatory capacity. Commissioner Cox said after the Grenon incident there was an investigation and hearings. She also said that the BPD does a good job with its investigations and that, in her opinion, there is no reason for a separate investigation.

Councilor Bergman moved to discuss the matrix of proposals that was put together by Josh Diamond. Josh Diamond went through the sections of the matrix. This matrix is available on the CivicClerk agenda overview or packet. The rest of this meeting revolves around discussing this matrix and the individual councilors' proposals.

Councilor Traverse added that he thinks there should be a charter change to clarify a complaint/feedback process that goes to both the Commission and the Police Department. The Department would conduct the investigation as they have the resources and professional staff to do so. Councilor Hightower added that the charter change should include that the oversight body (the Commission or otherwise) should also review the complaints/feedback in parallel with the BPD. Councilor Shannon said that BPD should put together the facts and that the Commission can review the facts and don't have to investigate in parallel.

Councilor Bergman thinks the designation/categorization of complaints should rest with the Commission. He thinks that the charter change should include that categorization power should rest with the Commission. Jordan Redell (Mayor's Chief of Staff) said that the Mayor supports having BPD leadership make the initial determination and then have the Commission review their decision as BPD has the staff and expertise to do so.

Councilor Traverse added that under his proposal the Commission could investigate or review the BPD's initial designation of a complaint category. He also wanted more clarity from a legal perspective about how a charter change could work with regards to incident categories since the Council just approved the collective bargaining agreement (CBA) with the police union that includes language on this topic.

Councilor Bergman asked if there is consensus on whether the Police Commission should have the ability to independently determine the level of seriousness of complaints. Only Councilor Bergman supported the idea as proposed. Councilor Hightower agreed with the idea, but with BPD also making a determination.

Councilor Shannon asked if the commissioners present had any thoughts on expanding their role. Shakuntala Rao was apprehensive about the amount of work that would require on top of current work. The more pressing question for the Commission is what the process will be if there is a disagreement between the Commission and Chief on the determination.

Bergman asked if there is consensus about having the Commission and BPD make parallel determinations (the Carpenter/Hightower proposal). Only councilors Hightower and Carpenter supported this proposal.

The unanimous consensus on this issue is that the Commission has a role to play in the complaint process, but there is not consensus on whether that role is determinative, parallel to the BPD's process, or final. The Committee will come back to this issue.

Councilor Traverse proposed a charter change to have a Community Complaint/Feedback form that would allow the public to submit feedback on officer conduct, directives, or anything else. This feedback/complaint would go to both the Commission and BPD. Councilor Traverse clarified that this system would be both for external (from the public) and internal (from other officers, etc.). This would be a codification in charter of an August 2020 policy. There is unanimous consent on this proposal.

Councilor Traverse clarified that his proposal sections on investigations mostly mirror the August 2020 complaint policy and that most of the content should be in ordinance rather than just a policy. The difference in this proposal is that setting a firm timeline from when the BPD must notify the Commission of a high-level complaint or use of force incident and codifying rather than relying on policy.

Councilor Hightower proposed for charter change that the Commission has the right to investigate mid and high level incidents and that discipline will not happen before the Commission has a chance to review. The investigation will be done in a reasonable amount of time. Councilors Hightower, Bergman, Carpenter, and Traverse voted yes. Councilor Doherty voted no/abstained, Councilor Shannon abstained. All are in agreement that Attorney Diamond should wordsmith the themes into proper language.

5.0 Adjournment

Motion to adjourn.

Motion by Councilor Bergman, without objection.

Yes: Unanimous

The meeting was adjourned at 9:33 PM.

A. Investigative/Review Function

1. [DD40](#), Section 1, Subsections B, C, D, F, and G describes the process by how allegations of violations of Department Rules or Regulations are initiated from within or outside of the Department.

Does the Committee wish to make any changes to how internal or community complaints are initiated?

2. [DD40](#), Section 1, Subsections A and E vests the authority to investigate all internal and community complaints regarding Department personnel with the Chief who determines whether an investigation is necessary or not. The [2021 Mayoral Executive Directive](#), requires that all use of force incidents that result in injury be reported to the Police Commission after investigation, but only after the Chief confers with the Mayor and receives the Mayor's approval with any recommendation from the Chief.

The overarching question is: Does the Committee wish to make any changes to this authority and process?

The following specific questions are raised by this broader question:

Should internal complaints be treated differently than community complaints?

Should conduct other than just use of force incidents that result in injury be reported to an oversight body (e.g., dishonesty, discrimination, harassment, criminal conduct, or other serious misconduct)?

Should reports to an oversight body only be reported after the Mayor has reviewed the Chief's recommendation?

Should an oversight body have a role in deciding who investigates internal or community complaints?

Are there distinctions based on the severity of the allegation ("categorization") that would change who is the investigator and decisionmaker on the disposition of the complaint?

Article XV of the [BPOA collective bargaining agreement](#) defines the continuum of lower-, mid-, and higher-level infractions. Should there be a modified process for categorizing complaints (e.g., should the process be authorized by charter?, etc.) and, if so, how does that intersect with collective bargaining rights?

Who decides on the categorization of the allegation?

Is the categorization reviewable?

3. If the Committee believes an oversight body should have a role in deciding who investigates internal or community complaints, who other than the Chief and their designee should conduct the investigation?

The following options are raised by this question: the oversight body itself, an independent investigator selected by the oversight body for a particular investigation, an independent monitor selected by the oversight body to conduct all investigations, etc..

4. For an explanation of the current investigatory framework, see [DD40](#), Section 3.

The broader question is: Should the current investigatory framework be changed?

More specific questions are:

Should this framework apply equally to all complaints?

What authority should an oversight body other than the Department have in the course of their investigation (e.g., right to review documents, subpoena testimony, review any Department investigation, make recommendations, etc.)?

5. If the Committee believes the Chief should retain some or all authority to investigate internal or community complaints, what role should the oversight body have during that investigation process?

More specific questions that arise from this broader question are:

Must the Department inform an oversight body upon the filing of a complaint and, if so, when must this notification take place?

Is the Department required to provide regular updates during the investigation?

Must the Department report back to an oversight body at the conclusion of all investigations?

Must the Chief's recommendation be approved by anyone—the Mayor, the Commission, an oversight body—prior to the decision being finalized?

6. [DD40](#), Section 2, outlines rights and obligations of employees during an investigation process, cross-referencing due process considerations in the [BPOA collective bargaining agreement](#).

Does the Committee wish to explore any changes to these due process considerations and, if the Committee supports different processes to investigate complaints, should the same due process considerations apply to each process?

7. If the Chief retains some or all authority (and responsibility) to investigate internal or community complaints, what occurs after the Chief issues their conclusions on how a complaint should be disposed?

Does an oversight body have any role if the Chief retains the authority and responsibility to conduct the investigation and make recommendations on the disposition of the complaint (e.g., review the investigation and make recommendations, etc.)?

If an oversight body makes recommendations on the disposition of the complaint and the recommendation is not followed, does the decider have to explain why the recommendation was not followed?

8. If an oversight body obtains authority to investigate internal or community complaints, what is the process going forward after it reaches its conclusions on how the complaint should be disposed (e.g., what rights do parties (accused, complainant, Department have upon receipt of the conclusions of the investigation)?

Should the complainant have any rights to appeal if they disagree with the final disposition?

What due process protections should be incorporated?

Should there be any changes to the requirements of the [BPOA collective bargaining agreement](#)?

Should anybody else (e.g., other community members) who is aggrieved by a decision have the right to appeal or to raise objections?

9. If an oversight body has authority to review an investigation of an internal or community complaint and a recommendation is made, what is the process going forward?

Should the complainant have any rights to appeal if they disagree with the recommendation?

What due process protections should be incorporated?

Should there be any changes to the requirements of the [BPOA collective bargaining agreement](#)?

Should anybody else (e.g., other community members) who is aggrieved by a decision have the right to appeal or to raise objections?

10. Should there be a process by which disagreements over the recommended action are resolved and by what authority is the process codified (e.g., charter change by which entity other than the Chief is resolving disputes)? What changes if a complaint is about the Chief?

B. Auditing.

1. What role, if any, should the oversight body have as an auditor. Sub-issues to consider:

What is the scope of matters subject to auditing (public safety trends, reviewing and creating new policies, adherence to policies and procedures, internal investigatory processes, analysis of aggregate data on discipline and other police practices).

What events should trigger an audit, e.g., periodic reviews or other events.

What is the scope of investigative authority as auditor, access to data, analytics, policies, procedures, and reports.

What degree of community involvement should an audit involve, including recommendations and feedback?

2. Deconflicting procedures regarding auditing/monitoring function: What procedures should be in place to make sure oversight body's operations work harmoniously with ongoing internal affairs investigations, criminal investigations, prosecutions, etc.
3. Transparency for public accountability and need for confidentiality in certain circumstances. When should data or other information be kept confidential, for how long, and under what circumstances.

C. Composition, selection, and resources.

What should be the oversight body's composition, selection and resources (e.g., staffing).

<p>Traverse</p> <p>I. Complaints</p> <p>Intake via Community Complaint form.</p> <p>Deputy Chief of Adm. tracks complaints and record keeping of essential information. This includes identification of witnesses, documents, evidence, and other information obtained or consulted with during an investigation of use of force incident (UoF) and any response taken.</p> <p>Complaints categorized by BPD as lower, mid, and higher level consistent with CBA.</p> <p>II. Investigations.</p> <p>A. BPD.</p> <p>Lower level and some mid level complaints resolved quickly with first level of supervision.</p>	<p>Hightower/Carpenter</p> <p>I. Complaints</p> <p>Oversight body receives all complaints a week before regularly scheduled meeting.</p> <p>Oversight body shall categorize complaints by severity (low, medium, high per CBA), UoF, discrimination.</p> <p>BPD shall annually report individual-staff level outcomes, data to be disaggregated by race and disability.</p> <p>II. Investigations</p> <p>A BPD.</p> <p>Chief will provide updates on each milestone in the investigative process to the oversight committee.</p>	<p>Bergman</p> <p>I. Complaints</p> <p>All complaints should be reported to the oversight body.</p> <p>Oversight body shall have ability to independently designate level of seriousness of complaint.</p> <p>II. Investigations</p> <p>A. BPD.</p> <p>Lower level and some mid level complaints resolved quickly with first level of supervision.</p>
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<p>Mid level, high level, and use of force escalated for Administrative Review (AR). AR determines whether IA investigation occurs. Referrals to SA or VCJC as needed.</p> <p>Reports of all complaints against members of the department sent to Police Commission (PC).</p> <p>Lower and mid level matters will be reported to PC via oral or written summary, status, and disposition. Recommendations of dispositions involving more than a written reprimand will be shared with the PC in advance of issuance.</p> <p>Regular updates provided on status of investigations involving high level matters, UoF, or unlawful discrimination. This includes key demographic information about the officers and subjects involved, reports, and video evidence. Recommendations for dispositions of such matters will be shared with PC before they are issued.</p>	<p>Chief will have the authority to refer resolution matter to restorative justice program, such as CJC.</p> <p>Chief will have authority to launch investigations after decision to refer matter to CJC has been made.</p>	<p>Mid level, high level, and use of force escalated for Administrative Review (AR). AR determines if IA investigation occurs. Referrals to SA or VCJC as needed.</p> <p>Reports of all complaints against members of the BPD sent to oversight body.</p> <p>Lower and mid level matters will be reported to oversight entity via oral or written summary, status, and disposition. Recommendations of dispositions involving more than a written reprimand will be shared with the PC in advance of issuance.</p> <p>Regular updates provided on status of investigations involving high level matters, UoF, or unlawful discrimination. This includes key demographic information about the officers and subjects involved, reports, and video evidence. Recommendations for dispositions of such matters will be shared with oversight entity before they are issued.</p>
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Commented [JD1]: Is there an obligation to maintain confidentiality during executive session.

<p>B. Oversight Entity.</p> <p>Shall have access to all evidence obtained from the investigation of a UoF incidents and their underlying complaints.</p> <p>By majority vote, after receiving Chief recommendation, may initiate independent investigation upon any complaint involving UoF, unlawful discrimination, or high level offense.</p> <p>Investigation to be performed by independent monitor or counsel. Authority includes ability to interview witnesses, obtain documents, and other evidence.</p>	<p>B. Oversight Entity.</p> <p>Shall have the authority to refer matters for resolution through restorative justice program, e.g., CJC.</p> <p>Shall have the authority to launch a parallel, independent investigation based upon majority vote.</p>	<p>B. Oversight Entity.</p> <p>Shall have access to all evidence related to an investigation of a complaint.</p> <p>Shall have authority to conduct an independent investigation.</p> <p>Shall have the authority to hire its own investigator.</p> <p>Shall have the authority to publish anonymized complaint reports.</p> <p>Subcommittee of oversight entity would review complaints, oversee investigations, and make recommendations.</p>
<p>III. Disposition/Discipline.</p> <p>Within 14 days of Chief's recommendation, PC shall accept recommendation, request reconsideration, seek an independent investigation by majority vote, or make an alternative recommendation for disposition.</p>	<p>III. Disposition/Discipline.</p> <p>Chief will make a recommendation to oversight body for all high level, UoF involving injury, and matters involving bias.</p> <p>Oversight body may make a recommendation for all high level,</p>	<p>III. Disposition/Discipline.</p> <p>After Chief's recommendation, oversight entity shall accept recommendation, request reconsideration, or make an alternative recommendation for disposition.</p>

Commented [JD2]: This may require review of possible issues involving CBA and Public Records Act. In addition, access to evidence may be limited if referral is made to State's Attorney for criminal charges and public disclosure would adversely impact successful prosecution and/or access to a fair trial.

Commented [JD3]: JRD Question: Should format be similar to OPR, where there is a panel with a professional investigator, PC member, and counsel?

Commented [JD4]: JRD Question: subpoena authority?

<p>If no action is taken by the PC within 14 days after receiving the BPD's recommendation, the Chief's recommendation shall be considered final.</p> <p>A. Conflict with Recommendations.</p> <p>Chief may accept or reject PC recommendation. If Chief rejects, written explanation provided for rejection. If majority of PC disagrees after explanation, PC shall report disagreement to Mayor.</p>	<p>UoF involving injury, and matters involving bias.</p> <p>A. Conflict with Recommendations.</p> <p>If a conflict arises between the recommendations of the oversight body and Chief, HR Director shall reconcile.</p>	<p>If the Chief does not follow recommendation for alternative disposition, they shall publish their objections and reasons.</p> <p>A. Conflict with Recommendations.</p> <p>Oversight body shall have the authority, in cases involving higher level infractions or police abuse, to impose discipline in conflict with the Chief.</p>
<p>B. Communication with Complainant.</p> <p>Communications with complainant informing them of the disposition or other status.</p>	<p>B. Communication with Complainant.</p> <p>Communication with complainant informing them of the disposition or other status.</p>	<p>B. Communication with Complainant.</p> <p>Oversight body shall have authority to publish findings, recommendations, and dispositions.</p>

Commented [JD5]: JRD Question, who is the final arbiter of the disagreement?

Commented [JD6]: Issues of investigative confidentiality should be addressed.

<p>PC may report performance concerns regarding the Chief to the Mayor.</p> <p>Annual report to City Council regarding summary of the number, type, and disposition of complaints, UoF incidents reported to the commission.</p> <p>V. Civilian Oversight Entity.</p> <p>Entity shall have professional staff including an oversight monitor.</p>	<p>V. Civilian Oversight Entity</p> <p>One body, up to 9 members, including one or two per district.</p> <p>Subcommittees including directives, discipline, and _____.</p> <p>Professional staff, at least .5 FTE, should be housed within City Attorneys Office, HR, but not BPD.</p>	<p>Oversight body shall have ability to review BPD training.</p> <p>Oversight body shall report auditing and monitoring activities to the public. This includes ability to publish anonymized complaints.</p> <p>REIB shall also have access to oversight body's data and analysis to report on UoF and other interactions that implicate equity issues.</p> <p>V. Civilian Oversight Entity.</p> <p>Independent body from PC to investigate and decide discipline.</p> <p>Membership appointed by the City Council after soliciting input from a range of community organizations. The body should represent the diverse nature of the City's constituents including those from historically marginalized communities.</p> <p>Professional staff including a monitor to assist with auditing functions, independent counsel.</p>
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		Budget appropriations commensurate with responsibilities, staff, and other community commissions and boards.
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