

NAME OF MEETING **Police Auditor Ordinance Review Committee**

DATE OF MEETING: **January 13, 2009**

TO: **Sarah Medary**

RECORDED BY: **Ruth Atcherson**

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ROUTING INFORMATION

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(Date & Initials)

MINUTES

Eugene Police Auditor Ordinance Review Committee
McNutt Room – Eugene City Hall
777 Pearl Street

January 13, 2009
5 p.m.

PRESENT: Tim Laue, Chair; John Ahlen, Vice Chair; Joe Alsup, Kitty Piercy, Chris Pryor, Alan Zelenka, Dawn Reynolds, Chief Pete Kerns, Norton Cabell, Rick Brissenden, Ron Chase, Angie Sifuentez, Claire Syrett, members; Sarah Medary, Assistant City Manager; Glenn Klein, City Attorney, Ellen Teninty, Facilitator.

ABSENT: Willy Edewaard, Erik Humphrey, members.

1. Introduction and Public Forum

- **Welcome**
 - **Review of Agenda and Materials**
 - **Minutes Approval**

Mr. Laue convened the second meeting of the Police Auditor Ordinance Review Committee (PAORC). He ascertained that there were no changes to the agenda. He noted that he had provided everyone with copies of a memorandum that included *Ground Rules to Keep in Mind when Chairing Public Meetings*.

Mr. Laue recommended that the committee defer minutes approval given that the draft minutes for the meeting held on January 5 had been circulated the prior day. He offered one correction, however:

- Page 3, paragraph 9: “Mr. Laue remarked that saying ‘any and all inquiries or requests for information’ sounded a little strong. Ms. Medary responded that it was intended to be more like ~~gate-keeping~~ *coordinating* than ~~coordinating~~ *gate-keeping*.”

- **Public Forum**

Mr. Laue reviewed the purpose of the committee and the guidelines the committee had agreed upon for public input. He reiterated the committee’s intent to review all testimony written and otherwise.

Tim Lewis related that he had been in contact with Assistant City Manager Sarah Medary regarding his ability to videotape proceedings. He said he could respect that some people would not want him to get too close to them, but the suggestion had been made to him that he remain on one side of the room as was the practice at City Council meetings. He felt that he could capture everyone’s face at the council meetings because the councilors were in a line but in the McNutt Room the PAORC members were sitting in a square. He averred that in order to get everyone’s facial expressions he needed to be able to move around with his video camera. He offered to “totally give [the group] some respect and some room” by trying to be less obvious about his activity. He felt this was what he needed to do in order to tell his story. He acknowledged that the meeting was being Web cast, noting that he had been advised that he could utilize that for his purposes but he said this would not be shooting from the same angles that he wanted to shoot from. He said he needed to do things differently. He opined that this was what was called freedom of the press.

Carol Berg-Caldwell thanked the committee for its interest in public input as evidenced by the provision of two opportunities to speak and for plans to host a public forum. She acknowledged the workload the committee faced and expressed gratitude for the committee's willingness to participate in the process. She opposed allowing the City Attorney to be the final arbiter when there was disagreement between the Police Auditor, Police Chief, and City Manager. She felt that given that the City Attorney had represented the City in "numerous police misconduct trials" and had been paid for it the attorney's office had a conflict of interest. She asked the committee to determine what portion of the payment to the City Attorney was attributable to police misconduct cases. She asked the committee to recommend that the City seek legal rulings from an independent law firm for future instances of possible impasses such as "those mysterious federal or state laws that ostensibly trump local decisions" or for the "vague national security concerns." She opined that the City's "multi-decades long" contract with the current provider of legal services had "cost us dearly." She wondered whether the "ongoing uncertainty and delay surrounding implementation of effective external police review" could have been avoided by seeking legal advice from another firm, one that had not participated in local police misconduct cases. She noted that the current contract would "roll over into yet another multi-year obligation" unless "wiser more fiscally responsible heads" prevailed.

Deb Frisch thought the committee was tantamount to "mixing and matching the same people who created the mess." She averred that the committee was sexist because there were not enough women sitting on it. She opined that limiting the committee to debating ideas generated by one former Eugene City Councilor was "unbelievably narrow." She said she would like to see more ideas from certain members of the police department, but "unfortunately" the committee would discuss "these substandard ideas" set forth by former-Councilor Bettman. She did not think the Police Auditor addressed the root problem that caused the "Magaña mess." She reiterated her unhappiness with the Police Chief.

Zachary Vishanoff advised the committee to look at the work of the last auditor committee because they had done a lot of work. He felt that building upon the work would inform the present committee. He believed that facilitated discussion was good but it was often not designed to get results "with teeth." He said he would produce a report of his recommendations. He commented that he would like to see a subcommittee of the PAORC meet with "former victims" who had been "put through the system" and had not found resolution and felt criminalized. He opined that no one had felt the "criminalization of being shot and having the cops lie about it." He wanted the committee to succeed and come up with results that would work for both officers and community members.

Bonny Bettman declared the background materials provided to the committee to be mostly not relevant. She had a list of memoranda that the councilors had received that she wanted included in the background materials. She felt that there was a "problem with the lawyers" who "would decide to release some things and not ... others." She said everyone should have a copy of the "new" charter, the memorandum received by the City Council from Judge Coffin, and letters and attachments from the attorneys that had represented the victims. She averred that there was a provision that stated that the City Manager should negotiate with the unions on behalf of the City Council. She asserted that it was mandatory now for the police oversight in the charter. She said Section 16 of the Charter contained the language that delegated specific authority to the City Manager. She opined that the lawyers were not speaking the truth when they found sections of the Charter that they believed interfered with the City Manager's authority.

Majeska Seese-Green pointed out that the list of committee members indicated that Police Chief Kerns was representing the City of Eugene. She believed that all of the committee members represented Eugene. She felt that this should be changed. She acknowledged that city staff considered the City of Eugene to be their employer. She pointed out that the budget document from the previous year called the citizens of Eugene "the most important part of the city organization." She urged the committee to think about the citizens that voted for the police oversight system and ask themselves if they had voted for a police oversight system that was "full of loopholes, a weak model to start with" that did not "really provide oversight." She did not think the voters

wanted the City to use its tax money for that.

2. Process Items

- **Charter Guidelines**
- **Roles and Responsibilities**
- **Decision Making**

Ms. Teninty reviewed the *Police Auditor Ordinance Review Committee Roles and Responsibilities*. She ascertained that the committee agreed with the roles and responsibilities of the chair, vice chair, facilitator, and staff lead. She then asked for input on the voting process, noting that there had been some indication that some people felt the committee should adopt a simple majority and not the two-thirds supermajority that had been initially set forth.

Mr. Alsop expressed his preference for a simple majority vote.

Mr. Chase preferred adoption of the supermajority for all of their decisions.

Ms. Teninty asked what the committee planned to do if it could not achieve the two-thirds vote. Mr. Chase replied that in that case the committee should forward the vote as it stood with an indication of who voted for what.

Mr. Zelenka said they needed to be consistent in whatever they chose to do. He felt that while it was easy to do the simple majority, the supermajority vote would send a stronger message.

Mr. Laue hoped the committee would make most of its decisions with a two-thirds vote, though he was comfortable with the simple majority. He said it was his intent to do what it would take to align the group.

Mayor Piercy said she would strive to get as many people as possible “on board” with decisions. She was amenable to decision-making with a simple majority.

Ms. Sifuentz indicated that she could live with either voting model, but she agreed that a two-thirds vote indicated stronger support.

Ms. Syrett said she could be convinced to opt for either voting model but she had some concern that the work not be obstructed by not getting a two-thirds vote. For this reason she was somewhat inclined to use a simple majority.

Chief Kerns felt that the voting model needed to be consistent. He wondered if having a two-thirds model would mean that things would take longer.

Ms. Reynolds echoed the Chief’s concerns. She preferred using a simple majority model.

Mr. Pryor appreciated the desire to get to a two-thirds vote. He felt that they needed to try to reach consensus as much as possible. He did not feel that the vote would be less valid if the committee used a simple majority model. He pointed out that the City Council regularly made decisions with simple majority votes. He stressed that the preference would be to have consensus.

Mr. Zelenka, seconded by Mr. Alsup, moved to use a simple majority model and record the vote, with an effort to get to two-thirds, and the committee should then rank the votes in terms of how strong they were.

Mayor Piercy offered a friendly amendment to indicate that the committee would strive for consensus. Mr. Zelenka accepted the friendly amendment.

Mr. Chase reiterated his preference for utilizing the supermajority.

The motion passed as amended, 12:1, Mr. Chase voting in opposition.

Mr. Laue advised the committee that when a motion was made it belonged to the table and no longer belonged to the maker of the motion. He said when people started making friendly amendments it put the maker and the second in the position of negotiating the intent of the motion. He felt the committee should refrain from making friendly amendments as much as possible.

Mr. Zelenka asked if the committee was adopting the guidelines, including the one that Mr. Laue had added at the first meeting. He asked for clarification regarding the bullet point, noting that the subsequent six changes that Ms. Bettman had set forth clearly violated it.

Mr. Laue said if it was okay with the group he was willing to withdraw the bullet point. He felt that he had made his point and the committee had understood it.

Mr. Zelenka, seconded by Mr. Chase, moved to delete the bullet point that stated, as follows:

- The committee's deliberations and considerations should be based upon Eugene's adopted system of oversight as described in the Charter, Ord. No. 20374, and the Police Commission's Civilian Oversight Ordinance Framework presented to the City Council on August 14, 2006.

Mr. Zelenka explained he wanted to drop it because he was not certain what it was based on and he was also not familiar with the document that the Police Commission had presented the council. He felt it had been good work, but the committee should take off from that point.

Chief Kerns said rather than withdrawing it he would propose that the committee change the language to indicate that the committee would use those documents for guidance.

Mr. Chase preferred to remove the bullet. He said the information was background in nature and the committee should be working from the newest version of the charter.

Ms. Sifuentz echoed Mr. Chase's sentiments. She suggested that they leave it as guidance and remove reference to the Police Commission.

Ms. Sifuentz, seconded by Chief Kerns, moved to change the wording so that the committee would use the Charter and Ordinance for guidance and delete the reference to the Police Commission document. The motion to amend passed, 11:2; Mr. Brissenden and Ms. Reynolds voting in opposition.

Mr. Laue explained that the committee would now be voting on the general guidance as edited by the preceding motion.

Mayor Piercy asked if saying the charter would be used for general guidance would be explicit enough. She thought the committee should be figuring out how to implement the charter.

Mr. Pryor observed that this was a good point; the committee was bound by the charter. He thought they had to constantly acknowledge that they could not do anything in violation of the charter. He did not believe the motion would take away that aspect of the charter, because it would instruct the committee that while they were bound by the charter they should be instructed and guided by it as well.

Mr. Zelenka noted that the committee left the Ordinance in the bullet point.

Mr. Brissenden understood the bullet point to be saying the committee should be guided by the past and the present. He said either the bullet was saying something antithetical to what they were doing or it was saying nothing at all. He supported deleting it.

Ms. Reynolds concurred.

Mr. Laue called for a vote on whether the edited bullet would remain. *(Note from the minutes recorder: was a little confused by what exactly this vote meant and may have interpreted this incorrectly.)*

The motion failed 7:6; Mr. Laue, Mr. Pryor, Ms. Syrett, Chief Kerns, Mr. Ahlen, and Mr. Alsup voting in favor and Ms. Reynolds, Mayor Piercy, Mr. Cabell, Mr. Brissenden, Mr. Zelenka, Mr. Chase, and Ms. Sifuentez voting in opposition.

Ms. Teninty related that it had been distracting to some members to have roving camera work. She reiterated that it would be consistent with council rules to require the press to remain on one side of the room. She added that the members were amenable to the fixed position cameras running and the Web casts.

Mr. Chase did not find the moving camera operator to be distracting.

Ms. Teninty said it had been an issue for some of the members.

Ms. Syrett had not been distracted by it but she was concerned that whatever privilege was offered to one camera person would have to be offered to everyone. She thought this could potentially become an issue if the media brought in larger cameras and in greater numbers. She was amenable to requesting that the press remain on one side of the table as opposed to circling the table as the gentleman who was operating the camera had done at the previous meeting.

Chief Kerns thought the committee should consistently apply the same rules as the City Council.

Mr. Zelenka moved that the committee adopt the same rules for the media as applied for the City Council.

In response to a question from Mr. Laue, Ms. Medary related that camera operators were not allowed to walk around though they did, on occasion, move from one side of the room to the other. She clarified that they assumed a fixed position on either side.

Chief Kerns provided the second.

Ms. Reynolds disliked making a blanket rule. She noted that the Civilian Review Board (CRB) met in the McNutt Room and sometimes dealt with sensitive materials. She said it was important for the CRB that people

not peer over peoples' shoulders. She felt that it should be decided on a case by case basis, adding that she was comfortable allowing the camera person to move around.

Ms. Sifuentes agreed with Ms. Syrett; she did not want to set a precedent.

Mr. Zelenka stated that the City Council rule was non-controversial. He did not think anyone would have a difficulty complying. He found having someone moving around to be distracting. He further pointed out that the meeting was already televised.

Mr. Laue said his concern was that the committee needed to be able to do its work without distraction and without feeling uncomfortable. He believed that if any member of the committee was made to feel uncomfortable then the committee as a whole was obligated to do mitigate this.

Mr. Chase wanted clarification regarding what Ms. Medary said about media cameras moving during meetings. Ms. Medary reiterated that a camera operator sometimes moved once during a meeting to capture one other angle.

Mayor Piercy wondered if Mr. Lewis could just listen to how everyone felt and then do his best to modulate his behavior. She questioned the necessity of making a motion.

Ms. Syrett related that it was her assumption that the Chair would have the flexibility to ask someone who was being a distraction to cease doing so.

Ms. Sifuentes asked if the committee could adopt rules that were similar to the rules of the City Council but with a little more leeway.

Mayor Piercy, seconded by Mr. Chase, moved to substitute a motion to just see how it worked and revisit the issue later.

Ms. Syrett called the question. The question was called by a unanimous vote, 13:0.

The motion passed, 9:4; Mr. Alsup, Mr. Zelenka, Chief Kerns, and Mr. Pryor voting in opposition.

3. 18 Item Rating Process

Ms. Teninty initiated the discussion of the motion language and the *Preliminary Agenda Guidance Tool*. Ms. Syrett explained that the committee gave the proposed changes a green light, which meant they could let the item move forward, a yellow light, which meant that the committee member wanted to clarify aspects of it prior to moving it forward, or a red light, which meant that the committee member did not want to move it forward.

Ms. Teninty said she wanted to determine if there were items, the "low hanging fruit," that could be moved forward to the next stage. She suggested the committee consider amendment #5:

"The Police Auditor shall have complete, unrestricted, and direct access to the necessary Eugene Police Department offices; the same as Internal Affairs staff. In addition the Police Auditor shall have complete, unrestricted, and direct access to the Internal Affairs database the same as the program coordinator and the Internal Affairs database supervisor."

Chief Kerns explained that he agreed that the Police Auditor should have access to the Internal Affairs (IA) database, but it was prudent to have only one person with administrative authority. He was concerned that

having more than one person with access could mean that a person could go in and move the data or delete or change the program. He felt that no one that did not work in their offices should have access that was greater than the people who worked there. He said the auditor should have access during the regular working hours. He added that only an IA investigator should have access to his or her office.

Mr. Laue agreed that the way it was phrased seemed pretty global.

Ms. Reynolds related that she and the Chief had already reached an agreement to exercise ordinary office etiquette. She explained that she had signed a confidentiality agreement that would allow her Level 1 access so that she could not be locked out of the database. She agreed that the administrator should be limited to one person.

Ms. Teninty underscored that the committee was writing policy. She appreciated Ms. Reynolds sharing with them and thought some of what she had shared could conceivably become policy language.

Mr. Alsup said his concerns had been addressed by Ms. Reynolds. He believed that the Chief's points were well-taken. He noted that the auditor's office had purchased the database.

Mr. Laue asked why the auditor's office did not administer the IA database. Ms. Reynolds replied that it was due to a lack of staffing. She said there was a person working for the police department who was an expert in the database and she relied on that person heavily.

Mr. Pryor thought they could move this item forward. He did not think it would be difficult to codify it. He felt that the intent of the proposed change seemed to be already in place. He averred that the concerns that were expressed were legitimate and could be easily addressed.

Mayor Piercy concurred.

Ms. Reynolds commented that it would be good to have the freedom to take the database over.

Mayor Piercy did not want to limit the access to the database in such a way that it would preclude allowing the Police Auditor to do so in the future.

Mr. Zelenka underscored that the intent in this was to provide access for the auditor to gain information.

Ms. Teninty ascertained that this item could be moved forward with the minor language changes.

Ms. Teninty asked the committee to consider amendment #6:

"The Police Auditor shall maintain strict name confidentiality whenever warranted or legally required. Upon classification of the complaint, the Police Chief may request the Police Auditor provide name confidentiality on a specific case, and the Police Auditor shall comply, but the identifications of any involved parties shall not be withheld from the Police Auditor."

Mr. Laue observed that this seemed to be related to common sense and professional conduct and violation of such expectations on conduct should be grounds for dismissal. He was willing to move this one forward.

Mayor Piercy agreed that this item was almost not an issue. She thought it would be good to have the group say that it assumed that there would be confidentiality.

Ms. Reynolds felt that as long as it was written with common sense it would work. She noted that some people did not want confidentiality, though this did not apply to officers.

Ms. Teninty ascertained that the committee was amenable to letting the item move forward.

Ms. Teninty asked the committee to consider amendment #9:

“The Police Auditor shall review random selections of Service Complaints.”

Mr. Laue said the whole concept of a random selection would involve a sample size that would be insufficient to provide a representative sample. He did not think the number of service complaints in the City of Eugene would reach a level from which a random selection could be pulled. He added that he would expect that the Police Auditor was reviewing service complaints.

In response to a question from Mr. Laue, Ms. Reynolds stated that there had been 250 service complaints in the past year.

Mr. Laue remarked that he would expect that if the auditor suspected that a complaint was not subjected to a thorough unbiased investigation or that service complaints were not being handled properly he or she would review them more closely.

Ms. Reynolds noted that the auditor’s office had begun calling complainants to see whether they felt they had been heard and their concerns had been addressed sufficiently. She explained that service complaints were generally handled more informally than complaints of misconduct.

Ms. Syrett wondered why this piece had been brought forward. She thought that this item was already a part of the duties of the Police Auditor’s Office.

Mr. Chase felt that the item sought to ensure that more serious complaints were not treated as service complaints.

Mr. Zelenka observed that the intent was to look at the outcomes of the service complaints. He clarified, at Mr. Laue’s request, that the resolution of the service complaint was the outcome.

Mr. Laue reiterated that the auditor model that had been adopted was the quality assurance model, which would provide for a thorough investigation, and not to adjudicate whether complaints were founded or unfounded. He added that he supported moving this item forward.

Ms. Teninty confirmed that there was committee support to move Item #9 forward.

Ms. Teninty asked the committee to consider Item #3:

“Upon the opening of a case file, and any time thereafter including closed cases, the Police Auditor shall have complete, unrestricted, and direct access to all records, evidence, documents, and all material the Police Auditor deems relevant to the complaint.”

Chief Kerns explained that Item #5 related to the office space and database, which did not constitute everything. He had some concern with the proposed change because when he and the auditor had looked at it they determined that it included things that the auditor would not necessarily need access to. He said their MOU delineated what the Police Auditor could and could not have access to.

Ms. Reynolds cited the Law Enforcement Data Systems (LEDS) as an example of something the auditor should not have access to, by statute.

Ms. Sifuentez said she had signified that this was a yellow light issue because she had not completely understood what it entailed. After learning what it referred to, she indicated it was a green light issue for her.

Mr. Pryor felt that some of the concerns lay around the item potentially providing the opportunity to “go on fishing expeditions.” He understood this was really not the intent; the intent was to remain relevant to the cases and the information relevant to a particular case. He did not believe that the item would provide the auditor with the opportunity to “go fish” for things.

Ms. Syrett recalled that the City Attorney had indicated in its memorandum of December 30, 2008, that it would be prudent to add “except where such access would violate state or federal laws.”

Mr. Alsup’s had been concerned with the language that allowed the auditor to deem what was relevant. He stated that if they narrowed and defined this it would allay his discomfort with it as it currently was written.

Mr. Laue noted that the representatives from the Eugene Police Employees Association (EPEA), Mr. Edewaard and Mr. Humphrey, had a prior commitment and could not attend the meeting. Mr. Edewaard had been the one member of the committee for whom Item #3 had been a red light issue.

Ms. Sifuentez agreed that clarifying the intent would be good. She wondered if they could make the language stronger so that a future auditor would not interpret it to mean that fishing for information was allowed.

Mayor Piercy thought they could move forward with this intention, but she wanted to “touch base” with Mr. Edewaard.

Ms. Teninty determined that the committee would support moving Item #3 forward.

Ms. Teninty asked the committee to discuss their concerns about Item #8:

“Risk claims shall be forwarded to Internal Affairs and the Police Auditor for classification and processing as a complaint.”

Chief Kerns explained that risk claims could run the gambit from someone whose fence had been run over by an officer to a tort claim for damage. He said all claims, within a day of receipt, were entered into the IA database.

Ms. Syrett asked how what was proposed was different from the current practices. Ms. Reynolds replied that even though the information was in the database it was not always readily apparent on what a person pulled up when looking through it. She had discovered allegations of excessive force in which someone had filed a risk claim with no companion IA investigation. She agreed that some of the claims were minor and some were more important and amounted to a lot of money. She felt that it made sense that the claims be pulled into IA in order to provide a better idea of the number of complaints they had.

Mr. Ahlen was concerned that this could become burdensome to the auditor’s office. He wanted to make sure the opportunity to capture the larger issues was there, but he did not want to increase the auditor’s work load with risk claims that could be more simply resolved.

Mr. Zelenka said the issue for him was that someone who filed a lawsuit might not necessarily file a complaint. He felt that if no complaint was filed, the claim went through a process but it never rose to the level of a complaint.

Chief Kerns stated that it was consistent with the ordinance that claims were evaluated as complaints. He underscored that not all claims were complaints, not every claim alleged misconduct. He said there were many

municipalities with civilian oversight systems that process claims differently than complaints because they were aware that it cost more to do it otherwise.

Mr. Laue felt the proposed change was classifying all risk claims as complaints. He said the language needed to be adjusted. He presumed that at present there was at least some preliminary investigation to a risk claim to determine whether there was any merit before either a service complaint or a misconduct complaint was made. He was concerned that this would put an unnecessary burden on officers. He pointed out that when employee folders were reviewed, the number of complaints made about an officer was part of the record. He averred that if the auditor did not have discretion to decide whether something amounted to misconduct or was just a service complaint it would create problems.

Ms. Sifuentez echoed Mr. Laue's concerns. She wanted to make sure not everything was classified as a complaint.

Ms. Reynolds said what brought this to her attention was that there were a couple of risk claims that alleged serious physical damage through excessive use of force. She related that when she had visited with the IA investigators they had indicated that they did not just write the reports for administrative investigations. She stated that they wrote them for other things. She thought there needed to be a basis on which to make a rational decision, in the case where a civilian had been injured, as to whether or not an officer violated policies and procedures while performing his or her duties.

Ms. Syrett ascertained from Ms. Reynolds that the auditor had the authority to open a complaint. Ms. Reynolds explained that the auditor had options such as opening the claims, asking for an investigation, classifying them as to whether it was a service complaint, misconduct, or criminal, and could then determine whether they could close a case administratively. She stressed that the important thing was that they could track the data.

Ms. Syrett thought it important for the auditor to have the ability to open a risk claim to determine whether there was a complaint.

Mr. Ahlen averred that as long as the resources were available he was amenable to having the claims classified as a complaint. He thought there might be an added benefit in that they would be able to help out risk claims "down the line." He saw no reason not to move the item forward.

Mr. Zelenka remarked that the bottom line was that the auditor should be able to classify complaints.

Chief Kerns liked the idea of moving the item forward but he thought the auditor should make the decision on whether a risk claim should be forwarded. He said he would like to add a 19th item if there was time, an item that would address what would happen after a risk claim was identified as a complaint.

Mr. Laue recommended that there be some language that clarified that not every risk claim should become a complaint in someone's personnel file, because this could make a difference in a person's career.

Mr. Zelenka said he would like to see some data regarding how many risk claims were filed in a year.

Mayor Piercy asked what would happen if an employee was working within the bounds of policy but a pattern was apparent of overzealous enforcement that resulted in complaints. She felt that the auditor would want to be able to review cases to see if such a pattern existed.

Mr. Laue noted that this would be a distinction between the officer's behavior and not the risk claim itself.

Ms. Teninty ascertained that the committee was amenable to moving Item #8 forward.

Ms. Teninty asked the committee to consider Item #2:

“Investigation of complaints shall commence upon classification of the complaint by the Police Auditor or as soon as possible thereafter, and no investigation shall occur before the Police Auditor has received, classified, and routed the complaint.”

She observed that a lot of committee members had given the item a yellow light designation.

Mr. Pryor thought the first part of the motion language seemed reasonable but the second part gave him pause because he did not want investigations to be held up by “either side of the equation.” He wanted to have more discussion in that regard.

Ms. Teninty asked Ms. Reynolds to list the different ways that something could be classified.

Ms. Reynolds indicated that there were a number of ways to classify complaints and listed the general categories, as follows:

- A service complaint that was an allegation of misconduct, which could include a violation of constitutional rights, or use of excessive force, or just behavior that was alleged to be discourteous.
- The service complaints that did not receive an IA investigation, but rather were investigated through the chain of command as they were more along the lines of discourteous behavior.
- Criminal complaints, which were a subcategory of misconduct.

Ms. Reynolds remarked, in response to Mr. Pryor’s concerns, that there had been some on the ground cases that had caused them to look into this. She related that in one instance a complaint had come in and had gone to the front desk of the police department and they had immediately began an investigation prior to sending it to the Police Auditor’s office. She alleged that the precipitousness of that action had negatively impacted the investigation. She said the auditor’s office did not do the investigation as much as they did the intake and then classified it and sent it back to IA. She added that she had some concerns about the way investigations were timed.

Mr. Zelenka averred that the fundamental principal was that all complaints should go through the auditor’s office first.

Chief Kerns observed that the term ‘investigation’ had a lot of meanings in the ordinance and in the protocols. In regard to the second clause of the proposed ordinance language, he felt that one would not want to tell a sergeant that he or she was not allowed to look into a service complaint upon receipt. He thought this could be remedied by fixing the language to indicate that no investigation concerning an allegation of misconduct shall occur before the Police Auditor received, classified, and routing complaints. He wanted to avoid limited a sergeant’s opportunity for addressing a service complaint.

Mr. Chase commented that what may begin as a service complaint could end up in an allegation of misconduct.

Ms. Reynolds noted that all of the language referring to the Police Auditor should include the words “and/or his or her designee.”

Mr. Brissenden opined that it might not necessarily be obvious initially as to whether something was an allegation of misconduct or a service complaint and this was why it should be seen by the auditor.

Mr. Ahlen said investigations were time sensitive and information could be lost in a delay. He wanted to ensure that this could be captured in the case where the Police Auditor was not available on a given day to classify and rout a complaint.

Ms. Reynolds noted that the current protocol required an investigation to begin within seven days of a complaint.

Chief Kerns remarked that the civilian oversight system, in some cases, was upsetting to the public. He explained that sometimes someone would complain about something that upset them that they had actually misunderstood. He felt this presented an opportunity in that moment to explain it. He said most of the time this was for a service complaint. He averred that when this happened with the auditor he or she was not in the position to always know an answer and resolve it in the moment. He related that a sergeant could explain what was going on in a situation that had generated a complaint in a way that could mollify the complainant but then the sergeant would still document the complaint and forward it to the auditor. He underscored that if the sergeant did not rout it to the auditor the sergeant would be in violation of the protocols. He added that he would be surprised if an officer failed to rout a complaint accordingly. He said when the auditor received the complaint, the auditor would then call the reporting party to ask whether the sergeant had really been able to address the concern. He noted that in some cases the sergeant had not been able to do so and the auditor had, on one occasion, made an allegation of misconduct. He underscored that he did not want to undermine the ability to provide a service to an angry community member.

Ms. Reynolds suggested adding the words “as practicable” after “as soon as possible thereafter.” She thought they could add “wobble room” language that would humanize the process for both the officer and the auditor, such as something that indicated that there would not be delays without good cause.

Mr. Alsup said he would be comfortable with including a timeframe such as “within 24 hours” or “within one working day.”

Ms. Syrett thought it would be good if the City Attorney could get at the language. She averred that having a sergeant ask what happened and then give background information on why an officer did something in a certain way was not necessarily an investigation. She pointed out that the ordinance talked about the auditor’s office conducting a preliminary investigation and suggested that the word ‘preliminary’ be included.

Mr. Zelenka commented that if a confidential informant filed a complaint it became complicated. He said it was unclear to him whether such an informant could be a community member or a police informant. He said they would not want a police investigation of such a complaint before it was investigated by the auditor.

Ms. Teninty ascertained that the concerns about the first six proposed changes to the ordinance language had been addressed to the extent that some revised language could be brought back to the committee.

Mayor Piercy requested that the format for the next review of the six items include the original language and the language with the changes suggested by the committee.

Ms. Teninty stated that the next meeting would be held on January 22 from 5 to 7:30 p.m. She asked the committee for a sense of how they wanted to proceed.

Ms. Syrett thought it made the most sense to continue working through the list.

Chief Kerns recommended that, prior to discussing Item #4, the committee hear from prosecutors as to why on rare occasions the chief would feel compelled to suspend cases for internal investigation.

Mr. Ahlen said they needed to encourage the members who were not present to submit their written comments.

Mr. Alsop expressed an interest in reviewing the written materials that former-councilor Bonny Bettman had referenced.

Ms. Medary noted that there were a number of items that Ms. Bettman had referenced. She remarked that some of this would be challenging for her to locate and asked that Ms. Bettman provide them to her, should she still have them. She added that the committee members consult the Meeting Wizard so the committee could coordinate around meeting dates.

Mr. Zelenka commented, regarding Item #10 which talked about the Police Chief as an employee of the City Manager, that there did not seem to be a mechanism for making a complaint against the chief.

Ms. Teninty congratulated the committee for going through the “mountain” of work they were given to consider and the progress they had made.

4. Wrap-Up and Public Forums

Mr. Laue reopened the floor for public input.

Zachary Vishanoff said the committee was working on important stuff. He thought the committee should have held a public hearing at the outset of its process. He suggested that people who wished to testify be given five minutes when the committee did hold a public hearing because of the complexity of the issues. He asked that the committee let the public know when the public hearing would be held every time it met. He also suggested that the committee provide an opportunity for the public to submit feedback via email and that they be allowed to do so anonymously. He averred that there should be an automatic investigation system for when someone was “shot” so that they were investigated right away. He also felt that the Police Commission meetings should be on camera.

Carol Berg-Caldwell stated that she had been glad to meet with Ofcers. Willy Edewaard and Erik Humphrey. She understood that they had a previous commitment that superseded the meeting and wondered if the Eugene Police Employees Association (EPEA) had another representative among its officers that could attend in their place.

Bonny Bettman stated that a draft ordinance had been provided to the City Council on November 17, 2008, that had included the first 11 items. She thought this draft should have been included in the packet. She said issues that were worked out “still needed to be in the code.” She averred that at some point “everyone would have to agree” that the council had a job description and was hiring a qualified professional, with the added requirement that the candidate should be an attorney. She felt that it would be “ridiculous” to assume that the person hired would not have a certain level of professionalism and would be rifling through files. Regarding #2, she called the idea of allowing a police officer the opportunity “of working it out on the street” the “antithesis” of what the auditor provision provided. She thought this should present an opportunity for the officer to let that member of the public know about the auditor’s office and possibly present them with an informational brochure about it. She believed that allowing officers to determine the classification of a complaint on the street would be “a mistake.” She declared that what had put the community into this situation in the first place was officers who were receiving complaints on the street and ignoring them.

Mr. Laue thanked Ms. Teninty for her facilitation and thanked everyone on the committee for their work. He adjourned the meeting at 7:25 p.m.

(Recorded by Ruth Atcherson)