

MINUTES

Police Auditor Ordinance Review Committee
McNutt Room—Eugene City Hall
777 Pearl Street—Eugene, Oregon

January 29, 2009
5 p.m.

PRESENT: Tim Laue, Chair; John Ahlen, Joe Alsup, Rick Brissenden, Norton Cabell, Ron Chase, Pete Kerns, Kitty Piercy, Angie Sifuentez, Claire Syrett, Alan Zelenka, members; Sarah Medary, Acting Assistant City Manager; Ellen Teninty, facilitator.

ABSENT: Chris Pryor, member.

Mr. Laue called the meeting of the Police Auditor Ordinance Review Committee (PAORC) to order. He noted that Mr. Zelenka would be joining the committee via speakerphone.

1. Introduction and Public Forum

- Review of Agenda and Materials

Mr. Laue reviewed the materials before the committee, a draft process for the public forum tentatively scheduled for February 19 in the Bascom-Tykeson Room at the Eugene Library; a letter from Mr. Laue on behalf of the committee to the representatives of the Eugene Police Employees Association (EPEA) regarding their resignation from the committee; and a simplified list of Roberts Rules of Order.

- Approval of Minutes

Mr. Laue noted the suggested change offered by resident Majeska Seese-Greene to her comments in the minutes of January 13, 2009, and determined there was no objection to incorporating that as amendment to the minutes.

Ms. Sifuentez referred to paragraph 6 on page 5 of the January 13 minutes and the request for clarification from the minutes recorder regarding the vote on the revised bullet. Ms. Medary recalled some confusion about the issue, and that the motion failed because the committee chose to retain the bulleted item already discussed.

Ms. Sifuentez, seconded by Mr. Ahlen, moved to approve the minutes as amended. The motion passed unanimously.

- Approve Committee Guidelines

Mr. Laue called attention to the guidelines, which were provided to the committee prior to the meeting.

Mr. Alsup, seconded by Ms. Syrett, moved to accept the revised committee guidelines.

Without objection, Mr. Laue deemed the guidelines approved.

Mayor Piercy arrived.

- Public Forum

Mr. Laue reviewed the rules of the forum.

Carol Berg Caldwell, 2510 Augusta Street, recalled former Chief Lehner's remarks to the Police Commission that the union had a place "at the table." She was disappointed by the union's withdrawal from the PAORC. She suggested the committee consider reaching out the EPEA leadership to encourage it to rejoin and perhaps the EPEA representatives could "pass" on issues they did not agree on. She said the Citizens Academy recently occurred at the Lane County Jail and a sergeant working at the jail volunteered to participants that police misconduct hurt all law enforcement personnel and how hard it was to work in an environment where the community lacked faith and trust in law enforcement.

Zachary Vishanoff, no address given, asked that the date of the final hearing be publicized as soon as possible. He also asked that speakers in the forum be given five minutes to speak instead of two minutes so they could share their own experiences with the committee in more detail. He asked that Police Commission and Civilian Review Board meetings also be televised. Speaking to the committee's three-ring meeting binder, Mr. Vishanoff asked that the binder include all the materials for the first police auditor committee, the minutes of the hearing about the police auditor before the council, and all the PAORC's minutes and materials. He asked that the public should be made aware when the binders were available.

Majeska Seese-Green, no address given, suggested that it was difficult for the committee members to absorb the materials they were given when the materials were available only shortly before the meeting. She thought it would be useful if the materials were available several days in advance.

Mr. Cabell and Ms. Reynolds arrived.

Bonny Bettman, no address given, indicated she would submit all her substantive comments via e-mail and encouraged committee members to contact her with questions. She spoke to the background materials, saying she wished the committee members had the benefit of that information before it started revising the ordinance. She thought that baseline information was important to have before decisions were made. She thought it particularly important for the committee to have the Coffin report and the two letters from the plaintiffs' attorneys. Ms. Bettman encouraged the committee to review the two resolutions that had been rejected by the council.

Ms. Bettman emphasized that the 12 provisions in her motion calling for revisions to the ordinance were not something she was "at all married to." Her objection was to ensure that the authority that the charter granted the auditor's office was fully implemented. The first 12 provisions were necessary to do so, and may not completely accomplish the objective; Ms. Bettman believed there may be others necessary. The other five provisions she offered were examples of next steps. She did not believe they were, in every case, consistent with the minimum threshold of authority granted to the auditor by the charter amendment.

- Letter to EPEA

Mr. Laue called the members' attention to a memo he authored to Eugene Police Employees Association President Willy Edwaard and read it into the record.

We regret the mix of circumstances that has led to your decision not to continue with the committee. In accordance with your wishes we will be removing your names from the PAORC Roster and associated distribution lists. Of course, we will keep you on the interested parties list of the committee.

I encourage you to stay informed of our work as it progresses and to feel free to contribute to the group by taking advantage of public comment, written testimony and/or participation in the upcoming Public Forum on February 19th.

Finally, for my part, I'd like to express my appreciation for your service. It is my sincerest hope that we can establish and maintain a civilian oversight system in Eugene that is balanced, appropriately transparent, and responsive to the needs of all in our community.

In the end I believe we can achieve a system that is accountable to the will of the electorate, and fair to all involved whether they be complainants, officers or the community at large. It is because I sincerely believe we can achieve these ends that I have volunteered in this capacity.

Please do not hesitate to contact me should you wish to further discuss this matter.

Chief Kerns arrived.

Mr. Laue asked for permission to forward the letter to the EPEA.

Ms. Syrett recalled that she had pointed out the committee roster continued to include those representatives, and she had thought it was important to “correct the record” to indicate they were no longer committee members. She echoed the comments made by Ms. Berg. She said she would be more supportive of the letter if it included a request for the EPEA representatives to return to the committee. She believed the committee was formed in part to give a voice to the concerns of the EPEA. She was disappointed by the EPEA’s decision to drop out of the committee.

Ms. Syrett referred to the first sentence of the letter and recommended that it be modified to read (struck text deleted) “*We regret ~~the mix of circumstances that has led to your decision not to continue with the committee~~*” because she did not believe circumstances forced the EPEA to drop out.

Ms. Sifuentes agreed that the letter should include an invitation to the EPEA to return to the committee. She thought the letter “closed the door” and she wanted it to remain open.

Mr. Laue said he would revise the letter to reflect members’ remarks.

Mayor Piercy expressed appreciation to Mr. Laue for authoring the letter and supported adding an invitation to the EPEA to return to the committee. She believed the communication from the union representatives indicated that they left the committee without hostility due to union-related reasons they sincerely believed precluded their participation. She noted her own letter of outreach to the union, in which she regretted the departure of the union representatives. Mayor Piercy thought the committee’s interaction with the union representatives had been positive.

- Upcoming Public Forum

Ms. Teninty reviewed the proposed format for the public forum, tentatively scheduled for February 19, 2009. Mr. Laue determined that committee members supported the date and format. Mayor Piercy suggested that Ms. Teninty facilitate the public forum section at the end of the meeting. There was committee concurrence.

Ms. Medary indicated she hoped to have a committee binder available at the City Manager’s Office soon. She emphasized the volume of information requests and her intent to provide all requested materials in as timely a manner as possible.

II. 18-Item Rating Process

The committee reviewed the draft ordinance text prepared by Mr. Lidz in response to former City Councilor Bonny Bettman's proposed Amendment 11, *The Police Auditor's budget shall be sufficient to accomplish all of the duties and responsibilities of the office including the sufficient and readily available funds to contract for external investigations.*

The text drafted by Mr. Lidz read:

Section 2.450

(5) The City Manager shall include in his/her recommended budget an allocation sufficient for the auditor and the auditor's office to carry out their duties and responsibilities under the Eugene Charter of 2002 and the Eugene Code.

Mr. Chase wanted to retain the text proposed by Ms. Bettman related to external investigations. Ms. Sifuentez concurred. She hoped that the auditor's purview was not limited to that given that the committee did not know what "might come up." Ms. Syrett and Mr. Alsop agreed.

Mr. Laue proposed to modify the text as follows:

The City Manager shall include in his/her recommended budget an allocation sufficient for the auditor and the auditor's office to carry out their duties and responsibilities under the Eugene Charter of 2002 and the Eugene Code, including the sufficiently and readily available funds to contract for external investigations.

Ms. Sifuentez, seconded by Ms. Syrett, moved to adopt the revised text.

Chief Kerns asked if the text had the effect of requiring the City Manager to recommend a budget that accomplished what was called for in the section, and if the council was also bound by the text. Mr. Lidz said yes. Ms. Syrett, a member of the Budget Committee, said the manager recommended a budget to the Budget Committee, which forwarded a recommendation to the City Council. She anticipated any recommendation could be altered in that process. Mr. Chase asked if the implication was that expenditures would be limited by what the Budget Committee recommended. Mr. Laue said that the implication was that the expenditures could be limited by the council adopted, which had the final authority over the budget.

Mr. Laue determined there was committee support for the motion.

The committee reviewed the draft ordinance text prepared by Mr. Lidz in response to former City Councilor Bonny Bettman's proposed 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.*

The text drafted by Mr. Lidz read:

Section 2.450

(6) The physical location of the auditor's office shall be separate from the police department, but in

close proximity so as to facilitate a close working relationship with others involved in the complaint investigation process, and easily accessible to the public. The auditor shall have complete, unrestricted, and direct access to the internal affairs offices whenever the internal affairs staff is present.

Ms. Syrett did not think the committee intended to restrict the auditor's access to when ever Internal Affairs staff was present; she recalled that the committee discussed normal working hours. Mr. Laue concurred. Chief Kerns also concurred. He said the IA sergeants have offices with keys that they close and lock when they were not present, so he would not want the ordinance to include text that allowed access to a private office when the sergeant was not working. He suggested that the draft ordinance be revised to read "access to the internal affairs office area during regular business hours." There was no objection.

The committee agreed to a suggestion from Chief Kerns that where the ordinance referred to the auditor, it be changed to the *auditor or his/her designee*. Mr. Lidz said that the definition of auditor would also be changed accordingly.

Mr. Alsup asked if there was a reason to provide the police auditor with access beyond "regular business hours." Ms. Reynolds acknowledged the difficulty of writing code language to address every situation. Mr. Laue questioned what "regular business hours" meant as they were different for different people. He emphasized the intent of the ordinance was access, and pointed out that the Police Auditor and Police Chief were supposed to work out protocols for the access to information. He was concerned about being overly prescriptive. Mr. Alsup agreed, but he did not want the Police Auditor to be locked into "9 to 5" hours. He wanted to ensure that "intent drove access." Mr. Laue suspected that if the Police Auditor had a problem with access that he or she would let the council know.

Ms. Sifuentes wanted some kind of precise language given that normal working hours meant different things to different people. Ms. Reynolds believed the protocols mentioned by Mr. Laue would address the issue. She suggested that the ordinance could refer to office hours recognized by the City. Mayor Piercy suggested that the ordinance read merely "office hours."

Chief Kerns questioned what "complete, unrestricted, and direct access" meant. Ms. Syrett suggested that such access meant that the auditor did not have to ask someone to let him or her in.

Mr. Brissenden supported the inclusion of the phrase as necessary.

Mr. Laue recommended that the auditor and chief determine the meaning of the phrase "complete, unrestricted, and direct access" in the protocols.

Mr. Zelenka reminded the committee that the phrasing was an issue because the auditor had been locked out of internal affairs by a previous chief.

Mr. Ahlen said that if the focus of the text was the internal affairs main office and access to that, and it did not include access to adjutant offices, he thought that could be worked out. Ms. Reynolds said that essentially, Internal Affairs was a hallway serving offices occupied by the investigators and support staff.

Ms. Syrett, seconded by Mayor Piercy, moved to amend to read: "The auditor shall have complete, unrestricted, and direct access to the Internal Affairs area during office hours."

Without objection, Mr. Laue deemed the motion approved.

The committee reviewed the draft ordinance text prepared by Mr. Lidz in response to the second phrase

former City Councilor Bonny Bettman’s proposed Amendment 5, *In addition, the Police Auditor shall have complete, unrestricted, and direct access to Internal Affairs PRO database the same as the program coordinator and the Internal Affairs PRO Supervisor*, Amendment 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*, and Amendment 5, *The Police Auditor shall maintain strict name confidentiality wherever 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 identification of any involved parties shall not be withheld from the Police Auditor.*

The text drafted by Mr. Lidz read:

Section 4.456

(3)(a) Except where state or federal law provides to the contrary, or where information resides on a restricted database governed by a contract that does not allow access beyond certain law enforcement employees, (i) the auditor shall have complete and unrestricted access to all complaints, investigative records, and information obtained or developed by the Internal Affairs investigator related to an administrative investigation of a complaint, whether the information exists in electronic format or hard copy, including information stored on an internal affairs database, (ii) the auditor shall be provided any other information identified by the auditor that is relevant to a complaint and (iii) the identity of any individual involved in an event giving rise to a complaint shall not be withheld from the auditor. When legally required or requested by the police chief, the auditor shall keep confidential the name of any such individual involved in a complaint and other information leading to the name of the individual.

Responding to a concern expressed by Mr. Chase about the specific legal citation precluding auditor access be cited at the time access was denied, Mr. Laue suggested that the first sentence in (3)(a) could be revised to read “Except where a specific state or federal law prohibits or provides to the contrary. . .”

Chief Kerns observed that all west coast police departments worked with informants and registered them with the Western States Information Network. The City had a contract with the network that stated it would not reveal the name of those informants to outside law enforcement. He suggested further research was in order. Mr. Lidz said he would have to review the contract but noted that the draft text mentioned restricted databases covered by contracts, which he thought would apply to the contract mentioned by Chief Kerns.

Ms. Teninty determined there was no objection to Mr. Laue’s suggestion.

Responding to a concern expressed by Mr. Zelenka, Mr. Lidz suggested that where the text read “except where” the text be amended to read “except where, and only to the extent that. . .” to make it clear that the police department were to disclose whatever can be disclosed. There was no objection.

Mr. Cabell, seconded by Mr. Chase, moved to accept the text as amended.

Without objection, Mr. Laue deemed the motion approved. Ms. Teninty pointed out that the reference to Section 2.456(2)(d) in that section should be renumbered to refer to (f).

In conjunction with discussion of the draft ordinance text prepared by Mr. Lidz in response to former City Councilor Bonny Bettman’s proposed Amendment 10, which stated *The definition for police employee shall include the police chief by adding “including the chief who answers to the City Manager*, the

committee discussed a concern raised by Ms. Reynolds that the revised definition of misconduct conflicted with how misconduct was defined when complaints against officers were classified. Mr. Lidz noted that the current ordinance lacked a definition of misconduct and that term must be defined somewhere. The definition was similar to but slightly different than the definition in the protocols, which spoke to violations of internal policy and seemed to be related more to administration than to misconduct. He conceded the use of the term could be confusing and suggested the committee might wish to use a different term.

Mr. Cabell suggested that the definitions for “misconduct” and “service complaint” be deleted and that the body of the definition replace the word “misconduct” in Section 2.454(5).

Mr. Laue suggested that the committee employ the phrase “violations of the Police Operations Manual” because it covered most aspects of police conduct, including dress. Chief Kerns said that the City also had financial and administrative policies and suggested that the text could be revised to read “City policy” which would also include the Police Operations Manual (POM).

Chief Kerns did not think the City Manager’s Office would prefer that the Police Auditor monitor its investigation. He thought providing reports to the auditor would be adequate.

Ms. Reynolds pointed out that the Police Auditor could decline to accept a complaint if there was another remedy. For example, if someone disliked how the chief managed the department budget, they could talk to the City Manager. She said she continued to be concerned about the potential the auditor would be the first place someone turned if they had a disagreement with the chief. She was also concerned about the potential of running separate investigations for related cases. Ms. Reynolds called for coordination and something in the ordinance that spoke to that and the need for a link between investigations. She added that as a practical matter, there would always be an outside agency involved in the case of a serious incident. She did not think what was proposed was a practical approach.

Ms. Syrett believed it was the committee’s intent that the auditor be involved in monitoring a complaint against the chief in the same way that the office would monitor a complaint against another officer. She argued that the whole idea was to bring the chief inside the oversight system, and a report to the auditor was the equivalent of an investigation. She wanted to change the text to reflect that the auditor would be involved in the investigation in the same way as he or she was with other officers.

Mr. Lidz noted the suggestions of Mr. Laue and Mr. Cabell and said he believed that either approach worked. He asked the committee’s preference. Mr. Cabell believed there was a substantive difference between the two approaches. He thought that the committee was more concerned about the type of violations that Mr. Lidz had included in the definition of “misconduct.” Mr. Laue had no objection to Mr. Cabell’s suggestion.

Mr. Brissenden suggested that the text could refer to “violations of the POM” with the exception of service complaints.

Mr. Laue noted the definition of “preliminary investigation” in Section 2.452 of the existing ordinance and suggested that address the issue of service complaints. He continued to believe the reference to the POM was sufficient and further suggested that the City Manager and Police Auditor could work together to determine what a substantive violation was in the protocols they developed. Mr. Brissenden agreed. He did not want to make the text overly narrow.

Ms. Reynolds suggested that the text could be revised to indicate that *The auditor shall classify the allegation against the chief and route it to the proper authorities for further investigation; to the extent*

practical, the auditor shall monitor and review the investigation.

Mr. Lidz said the POM also contained a definition of misconduct. He would likely lift that definition of misconduct and include it in the ordinance if the committee chose to adopt Mr. Laue's suggestion. He would also modify the definition to indicate it did not include service complaints.

Speaking to Ms. Reynolds' suggestion, Mr. Chase objected to the use of the phrase "to the extent practical." He thought it was incumbent on the City Manager to give the auditor the ability to monitor any investigation in any contract with an outside investigator. Ms. Reynolds pointed out that it was likely such an investigation would be conducted by an outside agency, and she had no authority to compel them to share information with her. Mr. Chase reiterated that such authority should be written into any contract entered into by the City Manager with an outside investigator.

Mr. Laue recalled that the committee agreed the auditor would classify the complaint in consultation with the City Manager, which he thought entirely appropriate. He recommended that Mr. Lidz review the discussion and return with some proposed revisions. There was general concurrence.

Ms Syrett argued that the committee did not need to invent a new process given that the ordinance already provided for a process by which the auditor classified and monitored investigations. Mr. Zelenka concurred.

Chief Kerns assumed that Mr. Lidz would examine the text in context of the charter, pointing out that the committee could not write an ordinance that superseded the authority of the manager. Mr. Zelenka said he did not disagree, but he thought that should be considered in the context of the fact that "the Police Auditor has the ability to monitor and the City Manager had the authority to supervise." He did not think there was a conflict.

The committee discussed former City Councilor Bonny Bettman's proposed Amendment 7, which stated *There shall be an opportunity for appeal of the Police Chief's adjudication to the City Manager for final determination (on the existing record). Appeal shall be available in cases of misconduct upon the request of the Police Auditor, the Civilian Review Board, or the complainant in cases where there is disagreement between the Police Auditor and the Police Chief or the Police Chief and the Civilian Review Board and to the Police Chief, and Amendment 13, Authority for the Police Auditor to determine final adjudication.*

Mayor Piercy suggested the potential that the City Manager would designate another individual to receive appeals.

Mr. Brissenden did not necessarily think the Police Auditor should make the final adjudication but he did think there should be an appeal of the chief's decision. He asserted he was hearing a need for such a process from the public, and further asserted that the community would not be satisfied with the police chief having the final word when the parties involved disagreed. He was not sure who the appeal party would be, but thought such appeals should be taken to "another level."

Mr. Laue believed that the proposed amendment was a definitive step away from the current model because it established a quasi judicial process. He suggested that the issue was a mandatory subject for bargaining and could open the City to litigation. He anticipated that legal briefs would be required if the matter went to an administrative law judge. Mr. Laue said there were many review systems that allowed for appeals, but those were often tied up in the courts. He said the City decided to stay away from the quasi-judicial process in favor of a function that allowed the community to evaluate the performance of the Internal Affairs Office, attempt to ensure the quality of investigations through monitoring and participations, and not effect the rights of employees. He said that if he was an employee he would question a

system wherein everyone but the employee got to appeal adjudication. He suggested that the committee could be opening a process that did more damage than good. He asked Mr. Lidz if the approach appeared to be quasi-judicial and if it would be subject to mandatory bargaining. Mr. Lidz responded in the affirmative to both questions.

Mr. Ahlen agreed with Mr. Laue. He had serious concerns about the proposed amendments. In regard to Amendment 7, he was concerned that the committee could set a situation where an allegation was found to be within policy, that decision was appealed, and the officer filed a grievance because the allegation was initially found to be within policy. He asked about the impact of the amendment on cases that were already adjudicated.

Mr. Brissenden said that currently, employees had the right to an appeal in the form of a contract grievance. He said that the complainant lacked a similar process. He pointed out that in the last year, the chief disagreed with the auditor ten of eleven times in regard to allegations of misconduct.

Ms. Reynolds said that if the committee chose to allow for an appeal, she thought it would have to do some research to find the best model. She asserted that the public had the right to appeal “almost any administrative function government performs” so she thought such an appeal in this instance was appropriate. Ms. Reynolds said that in many cases, complainants have been badly hurt. She acknowledged that the issue was a bargainable issue and the committee needed to consider carefully who would handle such appeals. She suggested that the City Manager, the Civilian Review Board, or another body could be formed. She believed that such appeals offered a “check and balance” to the “powers that the police department had over ordinary people’s lives.”

Mr. Alsup opposed the amendment. He was concerned about “gumming up the works” and the fact that the appeal issue opened up the need for bargaining.

Chief Kerns understood the committee’s interest in an appeal process. However, he believed that the civilian oversight system was in its infancy, and the City should consider whether an appeal was the appropriate thing to do. There were many complexities to the question; who would the appeal go to, what sort of decisions would be appealed. Would the appeal include the facts of the decision and the way the decision was made? Who would request the appeal? He pointed out that employees could not appeal every City decision. He felt the issue should be studied given the interest around it, but would not recommend the council include it in the ordinance because he did not think the organization was ready.

Ms. Syrett did not think the committee should hesitate to revise the ordinance even if the City had to bargain with the union. She considered that “part of the landscape” and pointed out the committee lacked any input from the union about the dynamics that might be involved. She “was sure” that police employees had “multiple opportunities” to appeal City decisions. She maintained that the issue had nothing to do with discipline, but with adjudication; the chief would still decide what discipline was. Ms. Syrett thought an appeals process would be a valuable addition to the current system. She acknowledged the change moved away from the current system, but she thought that was good, and if the City did not do it now, it would have to do it in the future.

Mr. Ahlen disagreed with the remarks of Ms. Syrett. He thought that such an appeal process would potentially undermine the authority of the chief in enacting discipline. He said that would be a huge difference in the final adjudication and in what happened to an officer in the end. He asked what happened if the chief found an officer acted within policy and an appeal was returned as sustained, putting the chief in the position of disciplining an officer he believed acted within policy. Mr. Ahlen maintained that such an approach would negatively affect morale, and questioned its effectiveness.

Mr. Laue said he did not raise the issue of bargaining because he was afraid of bargaining; he was not. He raised the issue because part of the intent behind the existing model was that bargaining issues were property rights issues. An employee's working conditions and wages were affected. The model in the charter and the ordinance before the committee had a diminimous effect on property rights. He said that most of the things that had been bargained should not have been bargained because they were permissive subjects of bargaining. Mr. Laue said the point was fairness to all parties; including the officer, the complainant, and the community. The goal was quality assurance and process evaluation, and if done, well, thoroughly, unbiased, and completely, that helped to rebuild the trust between parties.

Mr. Laue suggested the committee consider existing quasi-judicial systems and their prohibitions on *ex parte* contacts outside the record, all of which must be documented and established, and that was not an insignificant thing. It would consume considerable time. He pointed out that neither the charter nor the ordinance mentioned an appeal process, so it could be a charter amendment was necessary to implement an appeals process. He hoped to fix what was wrong with the ordinance and move forward with the model the community had twice endorsed. He said the amendments did not reflect that model and moved the community into an entirely different approach. He said that existing oversight systems that affect property rights were those most open to challenge. He emphasized the gravity of the decision before the committee, and its serious implications.

Mayor Piercy agreed with Mr. Laue that the issue had serious implications but she merely considered it a hill to climb. She was not opposed to the committee saying the City needed an appeal process, but was uncomfortable delineating that process without more information. She thought it would take more time to address the issue than the committee had. She suggested the committee forward the issue to the council as a "must do."

Ms. Reynolds said she did not support Amendment 13 but thought the appellate right achieved a good balance. She said that using discipline to effect cultural change was a slow and less than efficient way to do so. She found, oversight, communication, and training more effective.

Ms. Reynolds reported that in 2008, of 47 allegations of excessive use of force, only one was sustained by the CRB, although she acknowledged some allegations were still outstanding. She asked what incentive the department had to take such things seriously or to consider the community's values. She maintained that to a great extent, the CRB reflected community values but felt that the use of force in many cases was improper and went too far. She suggested that over time, that would change, but she thought the appeals process would be a useful tool in effecting change in how the department used force.

Ms. Syrett indicated appreciation for Mr. Laue's comments and acknowledged members' concerns about creating another unwieldy process but thought "creating a big process and getting mired down was part of executing justice." She agreed that the matter was complicated, and asked if the committee could forward a recommendation the council work to create such a process.

Mr. Ahlen said he would feel more comfortable if the committee included in its recommendation a statement that it identified an issue that it believed to represent a substantive change to police oversight as it was originally designed but there was considerable energy around the table for future council study of the issue.

Mr. Brissenden said the committee should not "pussyfoot" around the issue. He wanted to make a recommendation that the amendment be implemented, with a firm timeline. He maintained that to do otherwise would be viewed by the community as "another stonewall."

Mr. Cabell, seconded by Ms. Syrett, moved that the committee not move Amendment 13

forward.

Mr. Laue deemed Amendment 13 dropped without objection.

The committee discussed Amendment 7.

Ms. Sifuentez supported forwarding the amendment forward to the council with a recommendation for further study but she was also concerned about how timely that would be.

Mr. Ahlen believed he could support a recommendation to the council that spoke to the enthusiasm expressed by many members about quasi-judicial or appellate model. He was willing to investigate the merits of such a model. He said if asked to state if he thought it was a beneficial move, he would not be able to do so.

Chief Kerns agreed with Mr. Ahlen. He said that many successful police oversight systems have no such component or include a component that does not resemble what was envisioned by Ms. Bettman. He suggested the committee recommend that the council do further study of the different models that existed to determine if it was appropriate for the City of Eugene.

Ms. Reynolds said she had information about different oversight systems that included the different range of authorities that she could provide to staff and the committee.

Mr. Laue recommended that the committee review the report done for the Police Commission by the Police Assessment Resource Center. That report provided a scan of oversight models that existed in the United States. He also recommended the committee review the public testimony and minutes of the hearings regarding the report.

Mr. Chase thought the information cited by Ms. Reynolds in regard to the number of disagreements between the CRB and police chief over the use of force proved the system in place was not working. Until he heard the information about a 90 percent disagreement rate, he had been “on the fence.” He now wanted an appeal process and even stronger language. Ms. Sifuentez was also struck by the number of cases cited by Ms. Reynolds. She thought that information should be provided to the council because it would “drive the message home.”

Ms. Sifuentez moved that the committee not move forward with a recommendation related to Amendment 7 at this time but to recommend to the council there was urgency about the investigation of such a model. The motion died for lack of a second.

Mr. Zelenka said the reason the committee was considering the issue was because of the statistics quoted by Ms. Reynolds and in part because of the desire of some councilors for an appellate process. He thought if the committee “punted” the issue to the council, the council would “punt it back.” He thought the committee had time to address the issue.

Chief Kerns said the issue was extraordinarily complex. He recommended that if the committee recommended further study, it also recommend how that study was going to happen. He was unsure how the committee could establish a deadline for the council to act. He said that there was a story behind the every one of the cases in the statistics shared by Ms. Reynolds, and the he did not think the numbers justified the need for an appellate system. He urged the committee to give the existing system time to mature and work.

Ms. Sifuentez asked if the amendment represented a significant change from what the voters recom-

mended. Committee members disagreed on that point.

Mr. Laue challenged the committee to find a reference to appellate rights in the existing charter or the ordinance. He said if one could be found, he was willing to reconsider the topic. He pointed out that the Police Commission and the council spent multiple meetings over three years discussing the topics, and he did not think the committee was going to be able to draft ordinance text reflecting the amendment in the short time it had remaining. He reiterated that in his view, the amendment represented a major shift in the model adopted by the voters.

Mr. Laue, seconded by Mr. Cabell, moved that the committee not move the item forward, and recommend to the council that it look closely at the issue, find a way to address it, and bring it back to the community posthaste.

Chief Kerns suggested the motion be amended to recommend the Police Commission and Police Auditor work together on examination of such a process.

Speaking to the motion, Mr. Laue said that the system had not worked well at many levels because of disagreements about the scope of the auditor's authority. He was concerned that the system was at risk and he was committed to a police oversight system as adopted by the voters twice. He did not see a provision for a quasi-judicial function in the charter but instead a deliberate effort to stay away from it.

Mr. Brissenden believed the committee was charged by the council to fix the process and he did not think the committee should refer the issue to the council because it would not be doing its job.

Ms. Sifuentez disagreed with Mr. Brissenden. She said if the amendment was outside the scope of what was voted on by residents, it represented a change to the ordinance, not a process fix.

Mayor Piercy thought the issue represented a significant policy discussion and a significant move for the community. She supported looking at the issue but did not think that the council would believe the committee was "punting the issue back" if it supported the motion.

Mr. Laue, seconded by Mr. Cabell, moved to close debate. The motion passed unanimously.

Mr. Laue restated the motion, which was not to move Amendment 7 forward as an amendment to the existing ordinance, but that the council should consider the issue seriously because there was considerable community energy around the issue and it should be looked at closely as a possible change or addition to the existing model of civilian oversight in Eugene. There was no objection to Mr. Laue's summary of the motion.

The motion passed, 7:5, Mr. Laue, Mr. Ahlen, Chief Kerns, Mr. Alsup, Mr. Cabell, Mayor Piercy, and Ms. Sifuentez voting yes; Mr. Zelenka, Ms. Reynolds, Ms. Syrett, Mr. Brissenden, and Mr. Chase voting no.

Ms. Medary previewed the next agenda.

III. Wrap-up and Public Forum

Carol Berg Caldwell determined from Ms. Reynolds that of 14 adjudicated allegations of the use of force, only one was sustained by the police chief. She said that that some of the allegations were found to be

within policy, but she recalled that the CRB recommended four allegations as sustained. Ms. Medary asked Ms. Reynolds to provide those statistics. Ms. Caldwell hoped the media picked the numbers up. She recalled the chief saying that there was always an option for civil recourse, but she questioned the cost and trouble of that approach when it was a matter of public record that the police of chief found the officer did nothing wrong.

Randy Price, no address given, encouraged the committee to take a “can do” attitude about the appeals issue. He supported an appeals process. He objected that Mr. Laue did not support the amendment and refused to say “yeah, let’s look into it.” He said if the City Attorney was “too high-priced” to develop a legally defensible recommendation regarding an appeals process, “maybe a professor or a small committee” could. He said that it was not important to him that the voters did not vote on the issue because the goal was to get a system that worked for everybody.

Zachary Vishanoff clarified the details of what he hoped was contained in the three-ring binder. He voiced support for an appeals process. He advocated for more committee meetings.

Bonny Bettman spoke to the issue of office hours, asking what occurred if there was a major incident over a holiday or weekend. Speaking to page 9 of the draft ordinance, she emphasized the need to ensure the Police Auditor had access to information even if it was confidential or evidentiary. She believed the draft language codified the actions of former Police Chief Bob Lehner. Ms. Bettman maintained that the Police Auditor had the charter authority to contract for an outside investigation, so if there was a complaint against the police chief, the auditor had the authority to do so and the manager had the authority to adjudicate the issue, which was still within the line of command. Ms. Bettman did not think that should be a “big issue.” Regarding the relationship between the appeal process and bargaining, she said the charter amendment stated that the auditor’s authorities “were included but not limited to.” She said the authorities provided in items 1-12 of her motion were minimal thresholds; the council could add any authority it wished to the auditor. The charter also stated “notwithstanding Section 16 of the charter” which negated the City Manager’s powers in this area.

Ms. Teninty determined from Mr. Laue that while Ms. Bettman had several more comments to offer, the committee would honor its ground rules on the basis of fairness.

Mr. Chase complained about the fact the committee got so much information less than 48 hours before he arrived at the meeting. He personally had a full-time job and was unable to absorb so much information in so short a time. He said that the committee seemed “so locked in” to the schedule he thought that it was more concerned about “getting out of here in March than in doing a good job.” He called the committee’s schedule arbitrary and was not willing to produce an inferior product to meet the time schedule. He also complained that the committee had approved minutes from two weeks ago, and he could not remember things from that long ago.

Mr. Laue pointed out that the City Council established the time frame. As a facilitator, he was trying to do the best he could and knew that other members were also trying to do their best. He said the staff tried to get resources and materials to the committee in a timely way. He pointed out that he also had a full-time job. He said the committee had moved quite a few items forward but he could not vote to move items forward that he did not support.

Ms. Syrett averred that whoever facilitated the public comment should have discretion to give speakers additional time to provide additional public comment.

Mr. Laue adjourned the meeting at 7:30 p.m.

(Recorded by Kimberly Young)