

## MINUTES

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

February 26, 2009  
5 p.m.

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

ABSENT: Angie Sifuentez, member.

### INTRODUCTION AND PUBLIC FORUM

#### Welcome

- **Review of Agenda and Materials**

Mr. Laue called the meeting of the Police Auditor Ordinance Review Committee (PAORC) to order and welcomed those present.

There were no changes to the agenda.

- **Minutes Approval**

Mr. Alsup, seconded by Ms. Syrett, moved to approve the February 5, 2009, minutes as submitted. The minutes were approved without objection.

The corrected minutes were approved without objection.

Mr. Laue noted that references to ordinance section 2.454(b) on page 4 of the February 10 minutes should be changed to 2.454(5)(b). He revised his statement on page 9, paragraph 5, to read as follows: "He averred that ~~they needed to add a~~ the different components of ~~to~~ the oversight ~~they were discussing were coming too close to becoming, one that had the potential to be~~ quasi-judicial for him to be comfortable."

Mr. Chase, seconded by Ms. Syrett, moved to approve the February 10, 2009, minutes as corrected. The corrected minutes were approved without objection.

#### 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.

Chief Kerns left the meeting.

**Paul Prensky** urged the committee to give credence to Bonny Bettman's comments at the public forum on ordinance. He said the police auditor should have equal status with the city manager and the police chief in order to perform his or her job unimpeded. He thanked the committee for its work.

**Carol Berg- Caldwell** spoke to the February 25, 2009, memorandum from City Manager Jon Ruiz. She felt his suggestions would reduce the effectiveness of external review and she urged the committee to reject them. She particularly objected to the suggestion that the city manager be the final adjudicator of complaints against the police chief. She said citizens complaints about a Taser incident had been on hold for nine months and concurrent investigations had been blocked. She also objected to inserting a municipal court judge into the process. She encouraged the committee to continue its work on an appeals process.

**Zachary Vishanoff** expressed concerns about the suggestions from Mr. Ruiz regarding a process in the event there was disagreement between the police chief and police auditor. He said he had experienced retaliation from the police when he challenged use of force and felt the subsequent trial was unfair. He said this demonstrated that bringing a municipal court judge into the process would further the police department's lack of accountability.

**Bonny Bettman** stated that she had submitted her comments on the ordinance revisions in writing. She urged the committee to reject Mr. Ruiz's suggestions. She said the police auditor's authority to investigate all complaints was a crucial issue. She said the ordinance, not the Charter, defined "employee" and the ordinance was not consistent with the Charter in that way. She said Mr. Ruiz's suggestions were tantamount to the City Council interfering in some of the city manager's hiring decisions, contrary to the Charter. She also urged the committee to reject ordinance revisions that were inconsistent with the Charter.

#### **GENERAL DISCUSSION OF FEBRUARY 19 FORUM**

Ms. Teninty noted that comments from the public forum had been provided to the committee in writing. She invited feedback from committee members.

Mr. Ahlen was pleased to be able to participate in the public forum and felt there was a good turnout. He was impressed by the knowledge on the subject that was displayed by those who participated. He said the comments would be incorporated in the committee's report to the council.

Ms. Reynolds also thanked those who participated in the forum. She said the level of involvement underscored how seriously people took the need to strengthen the ordinance and give the police auditor and Civilian Review Board the tools they needed to make the system work.

Ms. Syrett thanked Ms. Teninty for her facilitation. She expressed her disappointment that there was no article about the forum in the *Register Guard*.

Mr. Alsup thanked Mr. Ahlen for the materials he prepared.

#### **CITY MANAGER COMMENTS**

Mr. Ruiz commended the committee's efforts. He said many of the issues it was working on were items he had presented to Chief Kerns to be implemented because he felt it was important to move forward on them. He clarified that he was not objecting to the content of any of the recommendations or moving forward with them; his suggestion was that the city manager inform the police auditor of any allegation against the police chief. He said the other issue he addressed in the memorandum was concurrent investigations. His suggestion, in order to

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make the ordinance “personality proof” was to involve a third part in the final decision when the auditor and chief were unable to agree on postponement of all or part of an administrative investigation. He felt a municipal court judge could perform that function, but the committee could identify a different entity. He stressed that he was not arguing against concurrent investigations; he was suggesting a way to make the process work in the rare instance when it might be inappropriate for an administrative investigation to not proceed beyond a certain point because of the criminal investigation.

Mr. Ruiz remarked that the issues that remained outstanding as the committee moved forward with its report represented a different aspect of the civilian oversight system. He suggested that deliberations on those be deferred until a permanent police auditor and police chief were hired so they could be a part of that discussion.

Mr. Chase stated that the committee was recommending it be reconvened to take up those issues immediately following the City Council’s action on the first 12 revisions.

Mr. Brissenden added that the committee was under scrutiny by the community to address all of the issues and conclude its work in a reasonable time.

In response to a question from Mr. Cabell, Mr. Ruiz estimated a police chief would be hired within six months.

Mr. Ahlen questioned what would be gained by postponing work on the remaining issues. Mr. Ruiz replied that delaying would allow those who would be implementing them to be involved in the discussions.

Ms. Reynolds preferred to have the committee move forward on the outstanding issues without any delay.

Mr. Ahlen observed that the ordinance revisions were a work in progress and an opportunity to make positive changes. He felt waiting for the auditor and chief positions to be filled would extend the timeline beyond his comfort zone. He said the end result was not likely to be perfect and issues could always be revisited at a later date.

In response to a question from Mr. Zelenka, Mr. Ruiz said his recommendation was that the current police auditor and police chief work with him to develop an appeals process and the auditor and chief could work together to clarify and implement the auditor’s role in hiring and training of Eugene Police Department (EPD) employees; the remaining items should be delayed until the police auditor and police chief positions were filled permanently.

Mr. Zelenka questioned whether involving a municipal court judge would add another personality to the process or impinge on the independence of the auditor. Mr. Ruiz said both the chief and auditor had a direct stake in the outcome of the decision; the judge was a neutral party in the discussion and could impartially weigh arguments against the intent of the ordinance regarding concurrent investigations. He did not feel the auditor’s authority would be impinged upon because of the judge’s neutrality and lack of investment in the outcome.

Ms. Syrett appreciated Mr. Ruiz’s message and the fact that he was willing to move forward currently with some of the issues, but encouraged the City Council to authorize the continued work of the committee to assure that it was a public process.

Mr. Chase said he was less concerned with a reduction in complaints than with changed police behavior. He did not feel there had been sufficient time yet to make that determination. He pointed out that if the community had confidence in the complaint process, there would be an increase not a decrease in the number of complaints filed because people did not fear retaliation.

Ms. Reynolds remarked that statistically there were more complaints; the concern was how they were investigated and resolved. She said few serious allegations were sustained and little discipline occurred. She said if a judge was involved in decisions regarding concurrency, Eugene would be the only oversight system in the country with that element. The auditor was required to be an attorney in order to understand the ethical and legal obligations not to interfere with a criminal investigation. She indicated that lack of concurrency resulted in outstanding cases dating back to 2006. She referred to information from Merrick Bobb with the Police Assessment Resource Center (PARC) on the subject of concurrency, which said that was the preferred approach for oversight systems.

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Mr. Ruiz commented that he was not aware of outstanding cases from 2006 and 2007. He assured the committee that he and the police chief were supportive of the oversight system and not interested in creating any barriers.

## **VOTE ON PROPOSED ORDINANCE REVISIONS**

Ms. Teninty asked the committee to consider each revision and determine whether it should be recommended to the City Council. Those revisions on which there was not unanimous consent would be discussed in greater detail.

Mr. Laue drew the committee's attention to a document with the current version of ordinance revisions show in legislative format and a document entitled *Auditor Ordinance Amendments*, which listed the proposed revisions in the order that they appeared in the ordinance. He said the committee would vote on each revision as proposed and those on which there was not unanimous agreement would be considered again at the end of the process. He said any dissenting votes would be noted in the report the council. He would identify any dissenting opinions on a revision offered by a committee member who was not present.

### Code Section 2.450(5) – auditor's budget

Mr. Laue determined there were no objections to adopting the new language as proposed.

### Code Section 2.450(6) – access to Internal Affairs offices

Mr. Laue determined there were no objections to adopting the new language as proposed.

### Code Section 2.452 – allows delegation to deputy

Ms. Reynolds objected.

### Code Section 2.452 – definition of service complaints

Mr. Laue determined there were no objections to adopting the new language as proposed.

### Code Section 2.454(1)(e) – review random selection of service complaints

Ms. Syrett objected.

### Code Section 2.454(5) – process for allegations against police chief

Mr. Laue noted that Mr. Lidz had language to propose, there was a suggestion from Mr. Ruiz to consider and Chief Kerns objected. The item was moved to the end of the process for further consideration.

Code Section 2.456(1)(c) – review of risk management claims

Mr. Laue determined there were no objections to adopting the new language as proposed.

Code Section 2.456(1)(d) – authority to classify and route complaints

Mr. Laue noted that Chief Kerns objected.

Code Section 2.456(2)(a-f) – investigation of complaints

Ms. Syrett objected.

Mr. Laue noted that Chief Kerns objected and Mr. Ruiz had suggested language for the committee to consider

Code Section 2.456(3)(a) – access to records and materials

Mr. Zelenka objected.

Mr. Laue called for discussion of those revisions not unanimously adopted.

Code Section 2.452 – allows delegation to deputy

Ms. Reynolds, seconded by Mr. Alsup, moved to amend the language as follows:  
“Police auditor. Police auditor or *designee* ~~deputy police auditor~~ if authorized by the auditor to undertake a certain function.”

Mr. Laue determined there were no objections to adopting the amended language proposed by Ms. Reynolds.

Code Section 2.454(1)(e) – review random selection of service complaints

Ms. Syrett pointed out that the language did not specify it was the auditor who would be making the random selection.

Ms. Syrett, seconded by Mr. Alsup, moved to amend the language as follows:  
“...2.456(1) and (2); and ~~review a random selection of service complaints~~ *randomly select and review service complaints.*”

Ms. Reynolds noted that currently the auditor’s office was reviewing all service complaints.

Mr. Laue suggested eliminating the word “random.”

Mr. Cabell, seconded by Ms. Reynolds, moved to substitute a motion to amend the language as follows: “...2.456(1) and (2); and ~~review a random selection of service complaints~~ *review a selection of service complaints.*”

Mr. Laue determined there were no objections to adopting the language proposed by Mr. Cabell.

Code Section 2.454(5) – process for allegations against police chief

Mr. Lidz explained the language he included in the legislative format document was somewhat different than the language approved by the committee. The phrase "...including those standards and rules applicable to a sworn officer." should actually read "...including those duties normally associated with sworn officers." He said there was no appreciable difference in meaning, but wanted to point out his error in transcription.

Ms. Syrett, seconded by Ms. Reynolds moved to amend 2.454(5) as follows:  
"~~...including those standards and rules applicable to a sworn officer~~ *those duties normally associated with sworn officers.*"

Mr. Laue determined there were no objections to adopting the amended language proposed by Ms. Syrett.

Ms. Syrett, seconded by Mr. Zelenka, moved to amend 2.454(5) by adding the following subsection: "*(c) The city manager shall inform the auditor of the city manager's decision on the allegation.*"

Ms. Reynolds remarked that there was no timeline attached to informing the auditor of the city manager's decision.

Mr. Laue commented that while the section required the auditor to inform the manager of an allegation and the manager would conduct an investigation, it did not preclude the auditor from exercising the authority to conduct an outside investigation if he or she deemed it necessary.

Ms. Reynolds reiterated her concerns with the lack of a timeline.

Mr. Ahlen noted that the section was a major topic of discussion during the public forum. He said the intent was to facilitate handling complaints about the police chief within the existing system. He felt the language as proposed was acceptable and supported inclusion of the language suggested by Mr. Ruiz and moved by Ms. Syrett.

Mr. Laue determined there were no objections to adopting the amended language as proposed by Ms. Syrett.

In response to a question from Ms. Syrett, Ms. Reynolds explained that timelines elsewhere in the ordinance were intended to avoid having allegations against an officer remaining outstanding for an inordinate length of time. She was concerned that lack of any reference to timeliness in the new subsection (c) could result in lengthy delays in notification to the auditor.

Mr. Zelenka agreed that some reference to a timeline should be included.

Mr. Lidz pointed out that unlike complaints against a line officer, a complaint against the chief could not be done by Internal Affairs; the city manager would have to rely on an outside investigator, making it difficult to comply with specific timelines.

Mr. Zelenka said it was important to clarify expectations regarding timeliness.

Ms. Reynolds expressed concern that the term "inform" was vague; there should be a requirement to explain in writing the basis for the city manager's decision.

Mr. Zelenka, seconded by Ms. Piercy, moved to amend 2.454(5)(c) as follows: "*The city manager shall inform the auditor of the city manager's decision on the allegation, and the written rationale be in a timely fashion.*"

Mr. Laue determined there were no objections to adopting the amended language as proposed by Mr. Zelenka.

Mr. Zelenka, seconded by Ms. Syrett, moved to amend 2.454(5)(b) as follows: "...who shall conduct or arrange for an investigation *in a timely fashion* on terms..."

Mr. Laue determined there were no objections to adopting the amended language as proposed by Mr. Zelenka.

Code Section 2.456(2)(a-f) – investigation of complaints

Ms. Syrett, seconded by Ms. Piercy, moved to amend 2.456(2)(b) as follows:  
"Paragraph (a) shall not preclude preliminary investigations by the auditor's office, or a police supervisor's attempt to ~~resolve~~ *address* a service complaint,"

Mr. Laue determined there were no objections to adopting the amended language proposed by Ms. Syrett.

Ms. Syrett, seconded by Mr. Chase, moved to delete subsection 2.456(2)(f).

Mr. Brissenden asked by the subsection should be deleted. Ms. Syrett said the subsection did not bring any value to the ordinance and created confusion because under subsection (c) the auditor would decide whether to conduct a concurrent investigation in consultation with the police chief and appropriate prosecutor.

Mr. Brissenden said subsection (f) referred to a criminal investigation of a police officer, which was a different issue. He felt it was important to require that the auditor be kept apprised of the status of those investigations and have access to the case files.

Ms. Syrett withdrew her motion. Mr. Chase concurred.

Mr. Brissenden cited 2.456(3), which stated that as provided in 2.456(2)(f), the police auditor shall not have access to a criminal investigation until the conclusion of any such criminal investigation. He found that inconsistent.

Mr. Laue said there was a distinction between being apprised of the status of an investigation and having access to investigation files. He noted that the auditor was authorized to have access to the portions of the file that were relevant to the administrative investigation.

Ms. Syrett agreed with Mr. Brissenden that the language seemed inconsistent.

Mr. Laue asked the committee to consider the language proposed by the city manager, which would refer a dispute between the police auditor and police chief on postponement of an administrative investigation to a municipal court judge for resolution.

Ms. Syrett preferred the language developed by the committee. She appreciated efforts to "personality proof" the ordinance, but felt at some point it was necessary to invest people with the responsibilities of their office and it was appropriate to invest the police auditor with that particular decision.

Mr. Brissenden opposed the city manager's proposed language because the committee's language was developed after extensive discussion. He also thought the proposal would inject more delay into the process and present a potential conflict for the judge if the criminal case was in his or her court..

Mr. Alsup disagreed with Mr. Ruiz's argument that judges were immune to political bias. He did not want to add another level to the process.

Mr. Laue indicated that he also was comfortable with the committee's language. He said the situation would apply to a tiny fraction of circumstances and it was appropriate to expect professional behavior from professionals; if that did not occur the council would need to find a way to address the problem.

Mr. Laue determined there were no objections to adopting 2.456(2)(a-f) as amended by the committee.

Code Section 2.456(3)(a) – access to records and materials

Mr. Brissenden, seconded by Ms. Syrett, moved to amend the language by deleting the last sentence as follows: ~~As provided in section 2.456(2)(d-f), the police auditor shall not have access to a criminal investigation file until the conclusion of any such criminal investigation.~~

Mr. Cabell expressed concerned that the sentence was being deleted without fully understanding the impact.

Mr. Lidz noted that the deletion was not one of the proposed motions under consideration by the committee and he had not researched the consequences of deleting that language. He said deleting language prohibiting the auditor's access to files did not grant that power, although someone examining legislative history could question why language was deleted if the committee was not trying to make that change and draw inferences accordingly.

Mr. Cabell pointed out that 2.456(2)(f) related to the auditor's involvement in a criminal investigation; the language proposed for deletion related to the criminal investigation files.

Mr. Laue stated there were specific reasons that the language was included in the ordinance and referred to comments by Pete Sandrock at the committee's February 5 meeting about doing nothing to compromise an investigation into an officer in a potentially criminal case. He said exclusion of the auditor and the auditor's office was done to assure there were no leaks from those types of investigations. He said that was the original intent of provisions related to not having administrative investigations conducted concurrently with criminal investigations with relation to a police officer and once it was determined no charges would be brought or the investigation was closed, the auditor would have full access to the file for anything related to the administrative investigation..

Mr. Lidz said another issue was related to chain of custody if the criminal investigation file included evidence and it was accessed by anyone other than the investigator.

Ms. Syrett said that 2.456(2)(f) granted the police auditor access to the case file relevant to the administrative portion of a criminal investigation of a police employee, which appeared to establish some boundaries although they were not as explicit as in 2.456(3)(a).

Ms. Reynolds thought the sentence could be deleted because as a practical matter no one would touch the evidence. She said there could be concurrent investigations of police officers and there could be information in the criminal case file that would be useful to the administrative investigation. She did not perceive a chain of custody problem.

Chief Kerns returned to the meeting.

Mr. Brissenden explained his motion, which was currently under discussion by the committee.

Mr. Ahlen appreciated the intent of the motion to ensure consistency, but was not certain deleting the language was the way to accomplish that.

Mr. Chase asked if the files under discussion were two physically different files. Mr. Laue said they were.

Mr. Laue explained the intent of the language. If there were a criminal investigation or a potential criminal investigation into the behavior of an officer it would be as restricted as possible to prevent any leaks of information and that was why the auditor was precluded from having access to a criminal investigation related to officers.

Mr. Cabell preferred to leave the language in the ordinance because 2.456(2)(f) addressed about complaint investigations and the auditor's involvement; 2.456(3)(a) addressed access to materials. He felt the sections were consistent with one another.

Mr. Ahlen said he was not convinced there was any consistency. He said if there was any doubt the word "except" could be added to the beginning of the last sentence in 2.456(3)(a).

Mr. Zelenka confirmed with Mr. Laue that the relevant case file and criminal investigation file were separate and distinct files. He said there was no inconsistency if the references were to different files. He asked for clarification of the differences between the files.

Chief Kerns said there were a number of reasons to prevent someone outside of law enforcement from accessing the investigation file. He said an agreement with the Interagency Narcotics Enforcement Team would not be possible if EPD shared investigative files with someone outside of law enforcement before the investigation was complete and forwarded to the prosecutor. Likewise similar expectations existed under the agreement with the Deadly Force Investigations Interagency Team, which was signed by all jurisdictions in Lane County with law enforcement and included protocols for investigative files to remain confidential until they were closed.

Chief Kerns shared a recent situation in which the murder investigation and deadly force investigation were kept separate because of the confidential information that was provided from sources that would not have been available if they knew information would be shared outside of law enforcement. His would prefer that the committee seek consultation before deleting the language.

Mr. Brissenden reiterated his intent to assure that the auditor had access to those portions of a criminal file that were relevant to the administrative investigation.

Chief Kerns said he was more comfortable with providing the police auditor access to criminal investigations before the criminal case was closed. He said the administrative investigation could move forward concurrently, but there was a risk in sharing information between the two investigations.

Mr. Ahlen asked if there were concerns with leaving the language in the section as it was already written.

Ms. Syrett pointed out that 2.456(2)(f) did specify that the police auditor would not be directly involved in criminal investigations, but would have access to the case file relevant to the administrative portion. She said while it was not specified that it was a criminal case file that was the implication because of its context.

Ms. Piercy said that nothing different was being said affirmatively by deleting the language.

Mr. Lidz said if the concern was with consistency, the word "except" could be added to the beginning of the sentence as suggested by Mr. Ahlen instead of deleting the sentence. He said that would avoid any inference being taken if the language was removed.

Ms. Piercy, seconded by Mr. Zelenka, moved to substitute a motion to amend the language as follows: “*Except* as provided in section 2.456(2)(d f), the police auditor shall not have access to a criminal investigation file until the conclusion of any such criminal investigation.” The motion passed; Ms. Syrett, Ms. Reynolds and Mr. Brissenden voting no.

Mr. Laue determined there were no objections to adopting 2.456(3)(a) as amended by the committee.

Mr. Laue said he was pleased with the committee’s decision to accept Ms. Piercy’s amendment as the issue had only been raised during this meeting, which did not allow time to determine the impact of deleting the entire sentence.

Mr. Zelenka, seconded by Mr. Alsup, moved to accept the final ordinance language as amended by the committee.

Mr. Laue determined that there were no objections to adopting the ordinance language as amended by the committee.

#### **DRAFT RECOMMENDATION TO CITY COUNCIL**

Ms. Teninty commended the committee for its work and recognized the efforts of Mr. Laue and Mr. Ahlen. She asked for feedback on the structure and content of the draft report.

Mr. Chase stated that he was in favor of recommending that the committee be reconvened.

Mr. Laue said he attempted to keep the report from the committee short and factual to the best of his recollection as he did not have access to either webcasts or minutes of the committee’s meetings when he drafted it. He conveyed Ms. Sifuentez’s interest in revisiting the issue of the council’s supervision of the police auditor and the point of contact. He noted an email from Mr. Brissenden proposing revised language related to appeals and a recommendation by Ms. Piercy at the February 10 meeting to include a discussion about the council identifying for the auditor the consequences of breaching confidentiality. He invited comments and suggestions from committee members and said those would be incorporated and an updated version of the provided to committee members early next week for review.

Mr. Zelenka asked how Chief Kerns’ concerns would be incorporated. Mr. Laue said those concerns were noted under the appropriate items in the summary of committee discussion and votes.

Mr. Zelenka said if the chief was going to write a memorandum expressing his concerns that could be an attachment to the report.

Ms. Medary asked if all of the public input and Pete Sandrock’s written comments should be attached to the report.

Ms. Teninty determined that committee members were satisfied with the overall framework of the report.

Ms. Reynolds suggested numbering the section headings for ease of reference instead of bulleting them.

Ms. Syrett asked what materials from the February 19 public forum would be attached to the report. Ms. Teninty said the agenda, the PowerPoint presentation, minutes and all of the comments would be included.

Ms. Piercy suggested including in the Introduction and Background section either the email from the Eugene Police Employees' Association (EPEA) or an explanation that EPEA had withdrawn from the committee because of bargaining issues.

Mr. Laue said that decisions from this meeting would be added to the Executive Summary.

Chief Kerns indicated he would submit his dissenting comments via email.

Ms. Teninty provided Chief Kerns with options for submitting his position, either as revisions to the text of the report or as an attachment.

Chief Kerns said he was willing to provide text in the report and a memorandum to be attached.

Mr. Brissenden expressed concern with Chief Kerns including language without the opportunity for other committee members to respond.

Mr. Laue reminded the committee that it had agreed at its first meeting that minority opinions would be reflected in the report for the council's benefit.

Ms. Reynolds wanted the comments from Bonny Bettman included in the report's appendices.

Ms. Piercy said that all committee members were equal and minority opinions should include those votes that were not unanimous. Ms. Teninty replied that only the votes from the current meeting would be forwarded to the council and the only dissenting opinions were from Chief Kerns, related to those items about which he had previously expressed concerns.

Ms. Syrett was concerned that showing a dissenting vote next to a motion would give more weight to that one vote. She suggested that the dissenting opinion could be included in the attached chart of votes instead of the body of the report.

Mr. Zelenka said that would make it more difficult for the council to read. The council had expressed an interest in seeing dissenting votes and the rationale for them and should not have to look those up in an appendix; dissenting votes could be identified in the summary of the committee's discussion of items and a fuller explanation could be provided in an attached memorandum.

Ms. Medary suggested that the chief's concerns could be fleshed out in the report from the minutes of previous meetings.

Ms. Teninty said the committee's responsibility was to provide the council with a report that would assist them in making final decisions and that should include the committee's recommendations and any other information it felt the council would find most relevant.

On the question of attachments, Ms. Teninty said the committee had discussion additional attachments consisting of a memorandum from Chief Kerns and comments from Ms. Bettman. She said that could be expanded to include all comments submitted electronically and opinions solicited from Mr. Sandrock and Mr. Bobb.

Mr. Ahlen suggested archiving all of the materials compiled by the committee on its website instead of attaching them to the report.

Ms. Teninty pointed out that Ms. Bettman had submitted her comments electronically on the day of the forum and had indicated she wished to have those serve as her written comments at the forum. She said those comments should be included as part of the materials from the February 19 public forum.

Ms. Syrett was in favor of Mr. Ahlen's suggestion. She said it was the committee's job to read all of the public comments and they could be made available on the website for councilors who chose to review them.

Ms. Teninty determined there were no objections to including a memorandum from Chief Kerns as Attachment E to the report. She asked if the committee was willing to revise the section Opportunity for Appeals [Item 7] with the language proposed by Mr. Brissenden.

Ms. Syrett agreed with Mr. Brissenden's language, but felt that because it was a recommendation by the committee and not a revision to the ordinance she would prefer that it be moved to the Recommendations section. She thought that would highlight that it was a forceful recommendation from the committee.

Mr. Laue said the language in the report reflected the motion passed by the committee as set forth in the minutes of that meeting.

Mr. Alsup noted that the Consistency in Ordinance Language to the Charter [Item 12] was somewhat unresolved as the committee had not yet made that formal determination.

Mr. Laue said the question before the committee was did it agree that the intent of Item 12 had been addressed through its work on the other items.

Mr. Ahlen asked if Mr. Lidz saw any other changes that were necessary in order to be consistent with the Charter. Mr. Lidz said in his opinion no other changes were required.

Mr. Zelenka, seconded by Mr. Cabell, moved that the committee was in agreement it had accomplished the intent of Item 12 by making revisions to the ordinance consistent with the Charter.

Mr. Brissenden said the committee had made a good attempt, but he was not certain that consistency had been accomplished.

Mr. Laue offered Mr. Brissenden the opportunity to submit a minority opinion.

Ms. Reynolds commented that consistency was a work in progress and there should be a caveat that recognized additional changes to the ordinance might be necessary in the future.

Mr. Laue determined that the committee unanimously agreed that the language it was proposing was consistent with the Charter, with the caveat that there might need to be changes in the future as the City gained more experience with the oversight system.

Ms. Teninty read comments from Ms. Sifuentez: "It is the perception of some community members that it is difficult for the full council to give the attention and direction that the auditor's office needs. By reviewing past experiences the council may be able to determine how best to improve supervision. I am in favor of assigning one lead supervisor person from the council. I think this will allow the council to be proactive instead of reactive as issues arise."

Ms. Piercy was supportive of the suggestion from Ms. Sifuentez, but recommended removing the word “one” and allowing the council to determine the best supervisory structure, whether it was one, two or three individuals as the point person or people.

Mr. Zelenka indicated he was in favor of the suggestion as modified by Ms. Piercy.

Chief Kerns preferred not to be that specific; there were many ways to provide that supervision and the committee should recommend the council find a more effective approach.

Ms. Piercy felt the committee should recommend what it believed was the best approach to supervision.

Ms. Syrett supported Ms. Sifuentez’s suggestion. She said even if the council did not accept the recommendation it would still get the message that attention had to be paid to supervision of the auditor’s office.

Mr. Laue strongly supported Ms. Sifuentez’s suggestion as it would improve the functions of the council, the police auditor, the police chief and the city manager within the system.

Mr. Zelenka said the council’s objection to that approach in the past was that it was unclear what day-to-day supervision meant. He identified day-to-day supervision as those things that might arise on a regular basis versus major decisions that should be made by the entire council. He felt the language in the recommendation was sufficiently broad to allow the council to work out the details of supervision.

Ms. Reynolds agreed that it would be beneficial for the auditor to have a councilor identified as the regular point of contact.

Ms. Teninty postponed the remainder of the committee’s deliberations until the conclusion of the public forum.

## **PUBLIC FORUM**

Mr. Laue reopened the floor for public input.

**Randy Prince** commended the committee for incorporating the public’s comments into its recommendations. Regarding Chief Kerns’ concerns about information from an investigation being leaked outside of law enforcement, he pointed out that it might reassure other agencies that the police auditor was a member of the Oregon State Bar. He encouraged the committee to indicate in its report that it anticipated contract bargaining would need to be reopened on some issues.

**Zachary Vishanoff** suggested delegating Councilor Andrea Ortiz or Councilor George Brown as the police auditor supervisor(s). He reiterated his proposal for an audio archive where citizens could explain why their cases might not be addressed by the ordinance revisions so that information would be available if the system failed to work in the future. He asked to have the minutes of the public forum available at the city manager’s office for the public to review. He discussed the hypothetical scenario of a rogue cop and a district attorney who wanted to protect that officer by declaring an investigation under way to keep the situation secret. He hoped that members of the public would be allowed five minutes to speak at the public hearing.

**Majeska Seese Green** thanked the committee for its hard work during the process. She was impressed by how the committee had worked through issues and its final report.

## **DRAFT RECOMMENDATION TO CITY COUNCIL (continued)**

Mr. Lidz stated that the committee had passed a motion at its February 10 meeting to include in its report a recommendation that in the circumstance in which there was disagreement between the auditor, the police chief, or the prosecutor regarding concurrent investigations that the auditor notify the City Council of that disagreement.

Mr. Laue pointed out that Ms. Piercy had suggested at the February 10 meeting, although there was no motion or vote, that the committee should convey the message to the council that they should develop a procedure to hold the auditor accountable.

Ms. Reynolds stressed the oversight system also involved the Civilian Review Board. She recommended that if the process moved forward and the committee was reconvened it should be renamed to emphasize that it was a civilian oversight system.

Ms. Teninty determined there were no objections to Ms. Reynolds' suggestion. She clarified that the issue of appeals would be moved to the Recommendations section since the committee was not proposing revised language. She asked if the committee wanted to add a recommendation that if it was reconvened it was charged with addressing items 14 through 18 in addition to appeals.

Mr. Laue said there had been a motion that the committee thought items 7 and 14 through 18 needed due consideration by the council and wanted to express its willingness to continue to meet on those items if the council desired.

Chief Kerns preferred to rephrase the recommendation to indicate that members of the committee individually were willing to continue working on the issues. He said the committee was not the same one appointed by the council and the council was different as well and he did not think the recommendation should speak to the entire committee.

Ms. Syrett wanted the report to reflect that the committee strongly encouraged the council to look at the appeals process and as a separate message the committee could be reconvened to continue its work.

Mr. Laue cited a motion passed by the committee that recommended reconvening the committee to address five outstanding items, as well as the appeals process. He said the motion was unanimously approved and represented the will of the committee.

Mr. Zelenka agreed with Ms. Syrett that the recommendation to continue work on six outstanding items should be a separate recommendation from the one to reconvene the committee.

Ms. Piercy wanted the committee to be conscious of the City's budget constraints and the growing demands on a reduced number of staff.

In response to a question from Mr. Brissenden, Mr. Laue clarified that the recommendation related to appeals would be based on the motion to make a strong recommendation to the City Council to put an appeals process into place and that the City Council do whatever it deemed necessary to make that happen.

Ms. Medary clarified that the city manager had recommended moving forward with the evaluation of an appeals process and the police auditor and police chief would develop a joint recommendation immediately. She said that could involve a smaller committee.

Ms. Syrett felt that it should be a more public process and not an internal one.

Ms. Reynolds said there were many models for an appeals process available to use as resources.

Ms. Teninty asked committee members to submit their report comments or revisions to Ms. Medary by 7 a.m. on Wednesday, March 4. She expressed her appreciation for Ms. Medary's support of the committee's work.

Ms. Medary said that she, along with Mr. Laue and Mr. Ahlen, would present the committee's report to the council.

The meeting was adjourned at 8:15 p.m.

*(Recorded by Lynn Taylor)*