



CITY OF TOPEKA

CITY COUNCIL COMMITTEE
MEETING MINUTES

SPECIAL COMMITTEE: POLICE & COMMUNITY

CITY COUNCIL
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Date: December 17, 2021

Time: 3:00pm

Location: 1st floor conference room; Holliday Bldg 620 SE Madison (*virtual attendance was available as well*)

Committee members present: Councilmembers Karen Hiller, Sylvia Ortiz (Chair), Michael Padilla

City staff present: City Manager Brent Trout, Interim Chief Bryan Wheelles (TPD), City Attorney Amanda Stanley

1) Call to Order

Chairwoman Ortiz called the meeting to order at 3:00pm. Committee members introduced themselves. Committee member/Deputy Mayor Michael Padilla was absent.

2) Approve minutes from November 12, 2021 meeting

Committee member Hiller made a motion to approve the minutes. Chairwoman Ortiz seconded the motion. Motion approved 2:0. Committee member Padilla had not yet arrived to the meeting.

3) Progressive Correction Action – Police Discipline Process continued [*This presentation can be found on the Committee's webpage*].

Interim Chief Wheelles provided a presentation to discuss the process for progressive correction action as it relates to the police discipline process. The initial slides of the presentation were reviewed at the November meeting. Chief Wheelles began where he had left off.

Highlights:

- Termination Process
 - Chief of Police makes request for consideration of termination of employment to the City of Topeka HR Director, along with the investigative &/or work performance summary.
 - HR Director reviews and makes recommendation to the City Manager.

- Employment termination decision is made by the City Manager.
- Termination of non-probationary permanent employees requires a “just cause” finding.
- Appeal steps for employment termination are available through grievance and arbitration processes.
- Law Enforcement Certification
 - All Police employee change of status forms (promotions, demotions, retirements, employment terminations, resignations) are mandated to be sent to Kansas Commission on Peace Officer’s Standards and Training (KS-CPOST).
 - KS-CPOST has full access to all PSU files - upon request- related to status changes.
 - They routinely conduct investigations &/or review PSU investigations related to misconduct allegations.
 - They have the option of stripping law enforcement of their state-wide certifications (required for employment).
- FOP Employee Contract Rights
 - Notice of investigation to include the nature of the investigation &/or inquiry.
 - FOP representation during inquiry with supervisor/commander or PSU.
 - Timeframe of questioning to be reasonably related to the employee’s shift-preferably during work hours.
 - Interviews to be of reasonable duration with breaks allowed for physical necessities.
 - Recording of interview is allowed by management and employee.
 - Transcripts of interviews can be provided if needed or upon request.
 - Employee is allowed access to reports and recordings prior to interview.
 - Refusal to answer questions in an official investigation may constitute insubordination and could result in employment termination.
 - Providing inaccurate or false information in an official investigation could lead to employment termination. This is also a Training Act violation. Knowingly providing false or inaccurate information can not only cost an officer their job at TPD, but could also cost them their certification as a Law Enforcement Officer in the state of Kansas.
- Management Rights

- Article 21 FOP Contract: Management reserves the right to:
 - “Direct the work of employees”
 - “Hire, promote, demote, transfer, assign, retain, and recall employees in positions within the public agency”.
 - “Discipline, suspend, demote, &/or discharge employees for just cause”.
 - “Determine the methods, schedules, means and personnel by which operations are to be carried on”.

Questions/Comments:

- Are you saying the KS-CPOST provides the change of status form of any officer in Kansas to TPD?

Yes. Under the process, if an officer resigns while under investigation, or employment is terminated as a result of investigation, which is a training act violation, CPOST receives a notification that is required for the change of status from local agencies that then notifies them that this change has occurred. That is when the Professional Standards Unit file is made available. CPOST then asks for that report. KS-CPOST has the ability, and sometimes does, initiate their own investigations from anonymous complaints that they receive and they then make the requests from local law enforcement agencies for records before and around these change of status forms.

- You spoke about bringing Legal in, are you referring to the Legal Advisor at the Police Department? Or the City Attorney?

The Legal Advisor within the Police Department is under the City Attorney’s office. Specifically related to these reports and when they rise to the level of employment termination, the City Attorney is consulted. The Police Department Legal Advisor reviews the memorandum that the Chief completes during the first step, when it is sent to the HR Director. The ultimate decision is made by the Chief, City Attorney and HR Director to move it to the City Manager who then makes the ultimate final decision.

- Chairwoman Ortiz requested an organizational chart be provided to the Committee. She stated that she sometimes gets confused as to who fits where within the organization.
- Committee member Hiller inquired if, at the officer level, there was any sense of push/pull from the union with regard to the management rights, such as assigning leave?

Chief Wheelles stated there are constant discussions and collaborations that occur, but that he did not feel there were any big misunderstandings between the union and organization about the listed management rights.

- *(This question was asked at the November meeting with Chief Wheelles bringing the answer to the December meeting)* Committee member Hiller would like to have more conversation at the next meeting (12/17/21) about the use of vacation time being used as an alternative to leave of absence in place of suspension without pay leave.

Chief Wheelles spoke to this issue and noted that there is contractual provision within the FOP Contract, Article 16e “Discipline Action” within the FOP Contract stating it “allows for a caveat for an employee to make a written request option to the Chief of Police on substitution of accrued vacation leave and/or comp time for all or any portion of the suspension”. The provision goes on to clarify that making the written request is optional, and that “it is the Chief’s sole discretion to either grant or deny this request”. Chief Wheelles further stated there is no available grievance process for that particular Chief’s decision. In his time serving as Deputy Chief, Interim Chief and current Chief, he has not seen this request made by an officer. There is a contract subsection to make the request for consideration by the Chief to grant or not grant this request to utilize vacation accrual in place of suspension leave.

Committee member Hiller noted that by allowing the use of vacation or other leave time in place of suspension time, to perhaps hide the fact from other officers that someone was placed on leave and under investigation, where if they are allowed to use vacation time, it may not raise any flags.

- *(This question was asked at the November meeting with Chief Wheelles bringing the answer to the December meeting)* Committee member Hiller noted the numerous processes of moving things up the chain of command and wondered about being able to expedite the process of corrective action by removing some of those steps.

Chief Wheelles stated he felt the current process is necessary, and that it ensures a high quality of multi-layered assessment of corrective action. Although efficiency is a concern, there is a mandated timeline within the FOP contract of 7 days for each step throughout the process to be completed throughout the various steps of the process.

About how much time does it take to get through a review?

It has to be within the timeframes. The correction action forms that are reviewed are generally a one-page document, as it is a summary. There are additional pieces of documentation and reports that are supplied, however it does have the mandatory timeline to follow.

4) Juveniles Procedures (video 36:20 minute mark)

[This presentation can be found on the committee’s webpage.]

Highlights:

- A Juvenile Offender, as defined by the KSA 38-2302, is a person who commits an offense while 10 or more years of age but less than 18 years of age which, if

committed by an adult, would constitute the commission of a felony or misdemeanor.

- The Kansas Juvenile Justice Code is covered by KSA 38-2301 and KSA 38-2330.
- State law mandates law enforcement to investigate cases of serious injury, death or sexual abuse of children.
- A juvenile who is taken into custody shall be brought without unnecessary delay to the parent, guardian or custodian unless there are reasonable grounds to believe that such an action would not be in the best interests of the child or would post a risk to public safety.
- The Topeka Police Department Policy 4.14 addresses Juveniles. *[This policy can be found on the committee's webpage as well as on the TPD webpage].*
 - Environmental needs assessment
 - Status offenses
 - Parental/Guardian/Custodial notifications process
 - Enforcement alternatives
 - Limited custody
 - Issuance of summons or complaint
 - Referral to juvenile court via District Attorney's Office
 - Transportation, Custody, and detention definitions
 - All fingerprints and photographs of juveniles taken into custody for criminal offenses shall be maintained at the Juvenile Department of Corrections (JDOC)
 - All juvenile records shall be maintained separate from adult records within the Topeka Police Department Records Unit and are subject to controlled dissemination as provided by law.
 - Consultation requirements with parent/guardian or attorney.
 - Process for absence of parent/guardian with juveniles under the age of 14.
 - Process for absence of parent/guardian with juveniles over the age of 14.
 - Legal authority of officers to take child into custody when officer has reasonable grounds to believe child is in danger. Additional details related to this procedure were reviewed.
 - Criminal Investigations Bureau or Department of Child/Family may interview school age victims in school, where appropriate.
 - "Child in Need of Care" - person less than 18 years of age at the time of the filing for the petition or issuance of an ex parte protective custody

order pursuant to KSA 38-2242. Additional subsections of this definition were reviewed.

Questions/Comments:

- Chairwoman Ortiz voiced frustration with the law requiring the presence of a child in the house when a call for service or other assessment is being done. She noted that without the child physically being present within the home at the time, the officer cannot remove the child, even when it is apparent and obvious that a child resides in an unsafe environment. This is something she would like to see changed.

Committee member Hiller noted she had spoken with a group of educators/school administrators who shared concerns about the change in State Law regarding juveniles. Committee member Hiller stated if the Police Department and the schools would bring suggestions to the Governing Body as to why and how this state law could be changed, it could be something the Body adds to their Legislative Agenda that is presented to the State.

Chief Wheelles added that for situations when children *are* in the home, officers do charge adults with aggravated endangering of a child. This is a person's felony. Unfortunately, yes the children do have to be present in order to remove them from custody. Presently, the only thing officers can do when they know a child resides at a home but is not physically present, is to document the conditions.

- Chairwoman Ortiz brought up an incident that had occurred at a YWCA, where the juveniles were under the age of 14 and the officer said they had to answer the question. Chief Wheelles recalled that incident and stated that although a TPD officer was present, the questioning and incident was initiated by a Kansas Highway Patrol Trooper. Chairwoman Ortiz stated she recalled the same.

5) Other Items - Chief's Advisory Board (video 1:06:00 minute mark)

Chief Wheelles provided background on the Chief's Advisory Board, noting this Board has had different names and different make-ups throughout various administrations. During the recent interim period, this was on hold. However, Chief Wheelles will be reinstating the Chief's Advisory Board. He wants this Board to be the most diverse, while also being able to make the biggest change. He would ideally like to have the full Board be around 15 people. This full board would meet quarterly, however smaller sub-groups would meet to discuss various priorities with the Chief on a monthly basis. Once this board is formed, it remains. He has begun the process of speaking to potential board members.

Chairwoman Ortiz stated she would like to see some new and different people on this Board, not just the same few that serve on many boards within the community.

Committee member Hiller inquired about the type of work Chief would be looking into and the sub-committees tasks. She also inquired if he had given additional thought to creating additional boards to review things such as policing, racial bias, and so on?

Chief Wheelles stated that the small group meetings would center more around topics of expertise where the full group would review broad topics of general things.

Committee member Hiller noted that over the past few years, there had been a few different groups working with TPD, which have since disbanded or ended. She inquired if he thought there would be value with bringing any of those back? Chief Wheelles responded that he would support any city level committees of that nature being established.

Chief Wheelles stated that, with regard to the Chief's Advisory Board, in addition to diversity, in the general sense of what most people would define it to be, would expand past gender and race. That diversity of ages, economic status, culture, and professional background would be also be factored in.

Chairwoman Ortiz recognized City Manager Trout and stated this would likely be his last committee meeting. She asked if he had any recommendations or comments to make with regard to this committee. He responded that he would like to provide some recommendations in writing to the Committee and would be sending some at a later time. He stated this committee has provided an opportunity for the Governing Body, the community, the Police Department and other departments that may be affected by recommendations that are brought forward, to do that deep dig and understand the different guidelines, policies and laws to understand how the Police Department works. It is important to understand what is right for our city and what needs to change for our city, rather than what is going on on a national level. The only way to find out what that is, is to do the work that this committee has been doing.

6) Adjourn

Chairwoman Ortiz adjourned the meeting at 4:15pm. The committee will next meet on January 28, 2022 at 3:00pm. In person and virtual attendance options will be available. Additional information can be found on the City's public calendar at <https://www.topeka.org/calendar>.

Meeting recording can be found at: <https://youtu.be/Lpf2MqbSjsk>