



# CITY OF TOPEKA

CITY COUNCIL COMMITTEE  
MEETING MINUTES

## SPECIAL COMMITTEE: POLICE & COMMUNITY

CITY COUNCIL  
City Hall, 215 SE 7<sup>th</sup> Street, Suite 255  
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**Date:** August 27, 2021

**Time:** 3:00pm

**Location:** 1<sup>st</sup> Floor Conference Room; Cyrus K. 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, Chief of Staff Bill Cochran, Interim Police Chief Bryan Wheelles, SGT Ruben Salamanca, Shelly Starr (Chief of Litigation), Gretchen Spiker (TPD PR Specialist)

### 1) Call to Order

Chairwoman Ortiz called the meeting to order at 3:00pm. Committee members introduced themselves.

### 2) Approve minutes from July 30, 2021 meeting

Committee member Padilla made a motion to approve the minutes. Committee member Hiller seconded the motion. Motion approved 3:0.

### 3) Field Training Officer (FTO) Program - Continued Discussion from 7/30

*[This presentation can be found on the committee's webpage at <https://www.topeka.org/citycouncil/police-community>]*

SGT Ruben Salamanca expanded on the presentation for the FTO program that had been reviewed at the July 30<sup>th</sup> meeting.

#### Highlights from presentation:

- Selection process and qualifications for applying to be a FTO and Field Training Supervisor (FTS).
- Program has been in constant state of evolvement. Continue to look for ways to improve.
- Teaching the FTO's to be teachers. Helping to educate them to know it is not about the FTO, but rather the recruit officer.
- FTO Training for 2022 considerations will be held in November and December of 2021.

- FTO/FTS/Recruit Officer meet & greet. This will be opportunity to meet and make introductions before the first night of hitting the street. Past recruits also attend and it has been found to be effective with alleviating some of the anxieties and stress on the first night in the program.
- The FTO program works through four phases over the course of twenty weeks. Each rotation will place recruits on different shifts and will respond to many different types of calls throughout the 20 week training period. :
  - Phase 1 (6 weeks)
  - Phase 2 (6 weeks)
  - Phase 3 (6 weeks)
  - Phase 4 (2 weeks): Recruit officer is now in “solo phase”. The FTO is only there to observe. This FTO is the same as the recruit’s first phase. The hope is that the FTO will be able to indicate that the recruit has shown growth in their ability over the course of the prior eighteen weeks.
- Core Competencies reviewed with an example of the rubric and breakdown of the weekly self-assessment and FTO’s daily and bi-weekly reports. This creates dialogue between the RCO and FTO, and shines a light on identifying strengths and weaknesses.
- Field Training Task List and task book are routine tasks which are performed daily by Topeka Police Officers. The Recruit Officer is required to demonstrate proficiency in all tasks before they are eligible for civil service status as a Topeka Police Officer. The task list portion of the manual is the record of the Recruit Officer, satisfying this requirement. If a task is not performed but only done through Scenario-based training, that will be indicated on the task sheet.
- Memo of Release and Extension of Training. Extension of training does not mean the RCO is unable to do the job, however may need additional training in certain areas, outlined in memo, before being ready.
- Field Training Release Board. This process has changed in recent years. New changes include having the Field Training Office and Field Training Supervisor provide their feedback and recommendation to the Field Operations commanders. In the past, the FTO did not feel empowered or like they had a voice in the recommendation process. With this addition, documentation and articulation has increased, because now they are responsible for the outcome of that recruit.
- FTO Critique Form - This effort has helped to ensure that the Field Training Officer maintains a high level off skill performance and interest. This form is presented to the Recruit Officer for completion. It is to the FTO’s benefit that they are aware of the impression they are making on those they are training.

### Questions:

- When a new recruit is being graded on “meets expectations”, is that calibrated to their newness in terms of how they are graded, and not long-term expectations?

Yes. Another reason we shifted to the current evaluation process, we wanted to bridge the number system with the performance evaluation that officers and other Staff are reviewed on during their annual performance evaluation process.

- Are there any concerns with Recruits or FTO’s not being honest on their evaluations? And do the two parties get to see each other’s responses?

They review the evaluations together. The recruits fill out self-evaluations and instructor evaluations throughout the training academy, so they are comfortable with this process during their field training phases.

- Committee member Padilla noted that in the self-assessment, and ongoing/continuous feedback to keep on top of issues that should be addressed, to me, it says the RCO is learning throughout the process and the self-assessment moves to the issue of integrity. If/when something happens that would cause someone to question their integrity, they are able to accept criticism and to maintain the need to always improve.

SGT Salamanca agreed that humility is in the same vein of integrity. And that having this model has, even recently, shown us that the early detection and intervention has shown to make a more humble recruit. It has also helped to identify characteristics of some recruits who will not be good fits for the department.

- How long has the department been doing this package that you are describing?

Approximately one year, however it continues to evolve. Once this current cycle ends, the team will be refining it.

- Committee member Hiller appreciates the two-way model. This model provides the opportunity for the FTO/FTS to give feedback, as well as the RCO to receive it, and vice versa. Having the ability to have the two-way communication

allows for the opportunity to continuously improve the department. SGT Salamanca agreed and stated it has shown to be positive.

Chairwoman Ortiz noted this is a beneficial and natural check-and-balance, and also creates the opportunity for the recruit to ask for help in an area they feel less confident in.

Committee member Padilla voiced an appreciation for the piece of having the ability of the recruit officer to get feedback from their FTO. And for the FTO to provide further explanation of their assessments to the review board. This is a piece that reinforces everything we would want to see before letting an officer out on their own.

- If a recruit has transferred from another agency, do they have to go through the full training?

A variety of components are reviewed with lateral transfers. Factors such as the agency they are coming from, their prior experiences and certifications are reviewed. Some lateral transfers prefer to go through the full academy. It is a case-by-case basis based on their strengths and weaknesses of that recruit for how much of the academy they are required to attend and how quickly they may be able to accelerate through their training.

- Chairwoman Ortiz recommended the committee attend the FTO training, and noted that being able to hear from the recruits and FTOs directly about the training and program was refreshing.
- Committee member Hiller noted she had asked, at the July meeting, for the training manual, which LT Cross had sent out following that meeting. There was a section that pertained to the importance of officers asserting their authority, but that controlling the situation and making sure the officer(s) get home that night. Committee member Hiller suggested that a refresher on what that says, and adding a small inclusion to that language to also say “all individuals make it home safely”...rather than just “the officer(s) make it home safely”, and to put that up front. Committee member Hiller suggested revising the language of the priorities to also reflect some of the updated language found in the RCO/FTO reviews.

SGT Salamanca noted that the FTO and Training manuals are currently being reviewed for updating, and will merge the two documents into one. Committee

member Hiller provided four items, in particular, that she would like to see reflected. Those include: establishing mutual respect no matter the position within the department, treating citizens the same no matter how they look or how they have delivered their message, the goal that everyone goes home at night, and a duty to intercede.

Chief Wheelles noted that a lot of the language Committee member Hiller is referring to have been updated in current department policies, which are available online, but that a valid point was made to refresh the training form of the manual itself, and that with most of the language currently being found within policies, the next step would be to merge that information together.

Committee member Hiller stated she felt the model for the annual review was an excellent idea, however would like to see those four other priorities included. Although they may be an expectation, it may be worth putting onto the review forms as well, so that it is in plain language and can be at the forefront of the minds of the officers.

Committee member Padilla suggested additional changes to the language, from “treating everyone the same” to something along the lines of “treating everyone appropriately”, “effectively”, “objectively”, “fairly” or some other form of that context. There are so many variables that go into responding to an incident, but those are all important tips to remember to consider.

- How long does a FTO remain eligible to be in that position? As long as they are performing well? Can an officer opt out?

Traditionally, it has been one year. This is another area we are looking at exploring. There are some FTO’s who do not have the ambition to promote, but are leaders without rank, and we want to be able to continue fostering those great FTO’s.

- Committee member Padilla suggested providing some type of insignia to identify the FTO’s, noting that rank is important to recognize, but that being an effective FTO speaks to an officer’s ability as well and should be noticed and recognized. SGT Salamanca noted FTO’s are provided with a pin they are allowed to wear on their uniform, however additional changes were being considered for moving forward.

- Could you speak to the area of training when the families are brought in to learn about the department?

SGT Salamanca explained that Family Night was a successful program, but that the COVID-19 pandemic hindered the ability to facilitate that program for the past two recruit classes, and potentially the upcoming class. However, the department sees the value of this program, and will bring it back as soon as it is safe to do so. The purpose of Family Night is to allow the family members/spouses time to ask questions of members of the department and their families and to build that support.

- Chief Wheelles provided closing comments. He stated that throughout the presentation, one question pointed to addressing how to teach maturity and character. And the department strives to achieve this by using a number of approaches. An individualized approach to development by pairing them through the process, day-to-day notions on how they are doing, weekly evaluations, and developing a sense of identifying the individual's strengths and weaknesses and helping them develop. The constant evolution of the training and openness to make changes for the better is another important step.

Last point, the most important piece about this is ingraining the pattern of self-evaluation on a daily basis for recruit officers and them understanding that those activities and training do not end once they are out of the FTO phase. By doing so, it becomes part of their thought processes, how you end the shift every day, and recalling all of the training that speaks to character and integrity. Chief Wheelles noted that the most important piece is about the level of professionalism shown throughout the full vetting process. The level of documentation for each and every Recruit Officer that moves through the program, shows the system is working. When officers are not meeting the requirements/standards of the program, the documentation provides the information to show the intense level of effort that had been put forth by the department, Training Unit and FTO program to develop the individual.

- How is this model being used moving up through the tenure of officers, and the rank and file, at this point?

Some of that answer was touched on before, it is about building those relationships and the reward. Those relationships are built, and officers come to value and respect the opinions of their tenured officers, and see them as mentors throughout their career.

- Is this process embedded throughout the department, and are there ways that we can improve?

Chief Wheelles stated he felt the department was trending in the right direction, and that the department is constantly evolving. The language pieces suggested for the training manual will be very important. “Yes” was the answer to the multi-layered question. Yes, we are moving in the right direction. Yes, we are going to continue to evolve and not stop. Yes, we are able to identify and review that we do not do everything perfect every single time, and we learn from those experiences and more forward. The expectation level that we have is the important piece.

#### **4) Qualified Immunity** (video 1:30:30 minute mark)

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

The City of Topeka’s Chief of Litigation, Shelly Starr, provided a presentation to review and explain the topic of Qualified Immunity (QI). She noted this presentation was a high-level overview to address the question regarding the ability to affect qualified immunity at the municipal level.

#### Highlights from presentation:

- Constitutional rights were guaranteed to all citizens in 1871. Currently, the way we see QI now, is how it relates to the Civil Rights Act that was signed into law by President Lyndon Johnson. It is no longer called the Third Klu Klux Klan Act.
- Common Law immunities were extended to officials sued under Section 1983. Thus, it is a judicial doctrine, but a very long-standing practice. This is Federal Law. Part of the issues is “What can we do as a municipality with regard to Federal Law?”, and there is nothing at the municipal level that we can pass that would change Federal Law. The City of Topeka cannot change the statutes or cases.
- Defining what QI is. It is a personal immunity that has to do with a government official. It does not apply to the municipality itself. That person has to be acting under the color of the state law. Actions have to be reasonable. Reasonableness is the touchstone of the immunities. The illegality of the action must be clearly established; you have to give the official fair warning that what they did or did not do was illegal. It is an immunity from suit, not damages.
- QI balances two important interests:

- The need to hold government officials accountable when they exercise power irresponsibly, through the judicial process.
- The need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.
- Balancing the interests:
  - Police officers are forced to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving. (Graham vs Connor)
  - Currently, the Court view the officer's actions objectively, using the perspective of a reasonable officer on the scene, without regard to underlying intent. The touchstone: Were the actions reasonable?
- Two types of Immunity:
  - Absolute Immunity, under Section 1983, is enjoyed by the President, Legislatures, Prosecutors, Judges, and Witnesses.
  - Qualified Immunity is available for all other government officials whose job relies mainly on the use of discretion, when acting under color of law, and in good faith. The actions are judged under an objective standard.
- Immunity allows government officials who rely on their own discretion the ability to do their jobs:
  - Prison Officials - Procunier v. Navarette, 434 U.S. 555 (1978)
  - Social Service Workers - Gomes v. Wood, 451 F.3d 1122 (10<sup>th</sup> Circ. 2006)
  - Dispatchers - Estate of Reat v. Rodriguez, 824 F.3d 960 (10<sup>th</sup> Circ. 2016)
  - Emergency Medical Services Providers - Potts v. Board of County Commission of Leavenworth Co., 39 Kan. App.2d 71 (2008)
- Both, the Civil Rights Act and Qualified Immunity are part of a vast body of Federal Law. The direct power to change QI lies with Congress; the Supreme Court can also change the direction of QI.
- Qualified Immunity simply cannot be eliminated at the Municipal level.

Questions:

Questions/Comments:



- In the various articles and opinions that have been passed around... "reasonable actions" have been the main concern. As a City, for example, Unnecessary Use of Force, is one area where the question is how do we set our standard? And how do we protect our citizens from unnecessary use of force? For that specific topic, it appeared in some of the more detailed descriptions that what the City's training standards were what that officer should have known. And that what the policies were and how much discretion, either by policy or practice was given to an officer could affect the assessment of whether that officer's actions were reasonable or not. Could you speak to that?

Qualified Immunity is a personal immunity. That does not mean the City doesn't have some possible liability, because there is also Monell claims, which states a city can be sued even though they are not a person, if their policies are the direct cause of the constitutional injury. The City has a very robust system for Use of Force; training and identifying shortcomings, and is constantly evolving and reviewing procedures. We are addressing shortcomings or retraining if there is an issue on that level. Historically, the City has had very good success in defending claims because, while an interaction may look rough to the public who is viewing raw body worn camera footage, there are a lot of things that are not on the video. Many of the components that go into the officer's decision are simply not there, but beyond what the public knows about police work and training, and what is and is not a danger to the police officer, that they have to protect themselves from. Attorney Starr restated that the City has very robust training, and she felt comfortable with that.

- Even in a situation where there was perhaps an excessive use of force? The officer would have qualified immunity, but the liability would come back on the City; if somehow our policies or supervisory practices had somehow let something that was beyond our expectations to go through?

If the training or the supervision was the cause of the constitutional violation (example: We did that because that is how we were trained), then yes, there would be liability on the City for that.

- But the officer himself/herself would still have the immunity if they had done the best that they could?  
Maybe. Without knowing the situation, it would be difficult to know that outcome.

- If a judge deemed the actions unreasonable, then the officer could have an issue? Yes.
- Committee member Hiller wanted to raise an issue, in terms of if there were things that we considered, or behaviors, that had occurred, that people weren't comfortable seeing; was there something that we could or should do about our training, supervision, evaluations, even training on what "discretion" means...if there is anything we could do to raise the baseline? Or, are we as good as we can be?

Attorney Starr referred to earlier comments made by Chief Wheelles regarding the constant evolution and evaluation the department goes through, as well as looking at what other cities are doing, in an effort to improve ourselves always. She applauded the Training Division for their effort, as most of that work is sought out by them.

- Committee member Padilla noted that while claims do get made, the City is very aware of our responsibility to make sure that we have set the standards high enough that we would not be in a position to have to defend poor training practices or poor field practices, because we have done everything we can to ensure, and continue to change our procedures and policies to make sure we do not violate a person's rights or abuse them in any way. He voiced appreciation for Attorney Starr providing the history of QI. He has run into situations, since being on the Council that the City Council can do things that we in reality cannot do. He feels that corrective action is being applied when it needs to be, but that the City and the Police Department have set their standards and policies to a high level to hopefully avoid these serious types of questions.
- Chairwoman Ortiz also thanked Attorney Starr for her information. Chairwoman Ortiz stated she had also received citizen communication requesting the creation or change of an ordinance to address qualified immunity, or get rid of it altogether, and she felt it was important for the information to come through the Committee to provide a clear understanding.

## **5) Progressive Correction Action – Police Discipline Process**

*This item was unable to be covered and will carry over to the next meeting.*

## **6) Other Items**

Chairwoman Ortiz will be coordinating the agenda and next meeting date with the City Council Assistant. To receive notice of future meetings when they are posted to the City of Topeka's Public Calendar, please complete the information found on the E-Notify program at: <https://www.topeka.org/e-notify/> Citizens wanting to speak on the items may contact the committee. Questions or comments should be sent to the Liz Toyne, City Council Assistant, at [etoyme@topeka.org](mailto:etoyme@topeka.org) .

## **7) Adjourn**

Chairwoman Ortiz adjourned the meeting at 4:52pm.

Meeting video can be viewed at: <https://youtu.be/Lx3sY9zsF8w>