

MEMORANDUM

To: Mayor and Council
From: Stephen K. Postema, Ann Arbor City Attorney
Re: Public Information Related to Proposed Co-Produced Policing Committee
Date: January 16, 2018

Issue: In considering the proposed Hillard Heintze Co-Produced Policing Committee (CPPC), the Council requested that public information be provided regarding City Charter provisions addressing police authority and citizen commissions, along with labor contract provisions covering discipline of police officers.

Background:

In November 2017, Hillard Heintze completed an assessment of the Ann Arbor Police Department (AAPD) and an analysis of AAPD's community engagement. In summary, Hillard Heintze found that: "Ann Arbor is a broadly safe and well-policed community. The crime rate is low, complaints against the police are not numerous, and there is a general sense of satisfaction in police services. . . . Despite underlying community support and the department's high level of overall professionalism, a weak relation between some of the communities of Ann Arbor and the AAPD has the potential to cause challenges to effective policing in all of the City's communities."

In response to their findings, Hillard Heintze has recommended a collaborative and advisory approach to community policing, starting with a "Co-Produced Policing Committee" (CPPC). The CPPC would be a large committee that is set up under and reports to the City Administrator. Initially, the CPPC would work with the AAPD and other stakeholders to provide recommendations regarding community policing priorities to the City Administrator, the AAPD, and the City Council. Report at pp. 32 and 33.

Below are some of the parameters under which the police operate and that any police-related citizen committee would need to operate.

City Charter:

Under Michigan law, a City has broad powers. The Ann Arbor City Charter provides broad authority to the police: "Police officers shall have all the powers, immunities, and privileges granted to peace officers by law for the making of arrests, the preservation of order, and the safety of persons and property in the City." Section 5.8(b).

The City Charter states that the police department "shall be in the immediate charge of the Chief of Police, who shall be responsible to the City Administrator." City Charter,

Section 5.8. The City Administrator, in turn, is accountable to the City Council. Section 5.1.

The City Charter allows for the Council to create citizen boards and special commissions, and generally defines these boards and commissions as advisory in nature in Section 5.17:

- (a) The Council may create citizen boards for each of the following departments: Police Department, Fire Department, Department of Public Works, Utilities Department, Department of Parks and Recreation, and Department of Building and Safety Engineering. ... The Council shall prescribe the number of persons on each such board, the terms of office, the method of appointment of members, the board officers and the method of their selection, and provisions concerning the holding of regular and special meetings. No person serving on such board continuously for six years shall be eligible to reappointment, until the lapse of three years. Each board shall serve as an advisory body to give counsel and advice to the head of the department and to the City Administrator in respect to all such matters coming within the authority of its department as the Council prescribes and shall have authority to make recommendations respecting such matters to the department head, the City Administrator, and the Council. The City Administrator, the Mayor, and Council Members shall be privileged to attend the meetings of each such board and to take part in its discussions and shall receive copies of the minutes of the board's meetings and of all reports prepared by it. The creation and operation of any such board shall not serve to impair the authority and responsibility of the department head, the City Administrator, and the Council as otherwise provided in this charter.
- (b) The Council may create special commissions, including commissions on housing, human relation, and civil defense, with authority to make studies, submit reports and recommendations, and to take such other action as may be prescribed by the Council not inconsistent with this Charter.
- (c) The Council may create quasi-judicial appeal boards and any other boards or commissions required by law.

Through the Council process, the Council will approve the bylaws and the members of any board or commission created.

To the extent that any board or commission is created and involves the police, under Michigan labor law, police labor contracts often set additional restrictions on the role of any such entity.

Labor Contracts:

Below is a summary of the pertinent labor contract provisions in the Ann Arbor Police Officers Association (AAPOA) contract, which covers the majority of sworn police officers (as well as in the Command Officers Association of Michigan (COAM) contract)², addressing one area of police governance – the disciplinary procedures:

1. When there is a complaint against an officer, the City has 14 days to inform the employee about the complaint and identify the complainant. Certain legal rights apply at this point concerning having a union steward present and involving the use of statements in criminal court proceedings.
2. After the supervisor provides this notice to the employee, the complaint has to be formally written and presented to the employee. The employee can reply and then the investigation is conducted. The City has 14 days to investigate following the employee's reply, although the time can be extended with an explanation about why to the employee and the union. The employee's interview is taped and witness interviews are taped if both parties agree.
3. After completion of the investigation, the investigation goes to the Deputy Chief for review. (There can be no consideration of prior disciplines that occurred more than 24 months earlier when considering discipline for the current incident.)
4. The Deputy Chief, within 14 days, can issue a written discipline or, if he thinks a greater discipline is appropriate, can send it to the Chief with a recommendation. The Chief then has 14 days to issue his decision.
5. Discipline, by contract, is limited to the following: Written Warning, Reassignment, Suspension, and Dismissal.
6. Once the employee is disciplined, he/she has 14 days to appeal it under the grievance procedure, directly to the HR director. If the HR director upholds the discipline, the Union may take the matter to arbitration within 14 days. The arbitrator's decision is binding on both parties.

² There are two other bargaining units in the Ann Arbor Police Department comprised of civilian employees – Ann Arbor Police Officers Association for Police Service Specialists (PSS), and Ann Arbor Police Professional Assistants (AAPPA) affiliated with the Technical Professional Office Workers Association of Michigan. These employees are not sworn officers and do not perform primary law enforcement functions. They are, however, subject to the personnel complaint process.

7. In addition to these provisions, the Contract specifically limits those who can view an employee's file to the Chief, Deputy Chiefs, Chief's Management Assistant, PSS Lieutenant/Sergeant, City Administrator, HR, and City Attorney.

Conclusion

I have provided this general information about the City Charter and collective bargaining agreements to aid in an understanding of the framework under which the proposed Co-Produced Policing Committee would operate.