

CITY OF MADISON
INTRA-DEPARTMENTAL
CORRESPONDENCE

DATE: April 28, 2017

TO: CCEC Subcommittee on Police and Community Relations

FROM: Michael Koval, Chief of Police

SUBJECT: MPD Response to CCEC Recommendations

The Common Council Executive Committee Subcommittee on Police and Community Relations was formed in September of 2016, and has met regularly since then. MPD has cooperated fully with the Subcommittee's activity; Captain Jim Wheeler has served as staff to the Subcommittee, attending all meetings, and a number of MPD personnel have appeared before the Committee. The Subcommittee has prepared a series of draft documents outlining recommendations for MPD policies and procedures. This document is my response to the draft recommendations, dated 4/14/17, and is being completed at the request of Alder Bidar-Sielaff.

Before addressing the Subcommittee's specific recommendations, I address two issues. In 2015, the Common Council formed an Ad Hoc Committee to review MPD policy, procedure, culture and training. That group has been meeting periodically since then; an MPD Captain has served as staff to the committee, and MPD personnel have been available to appear before the Committee. However, the Ad Hoc Committee has elected to actually hear very little from MPD directly.

The Ad Hoc Committee's work resulted in the selection of an outside consultant (OIR Group) to engage in a comprehensive review of MPD. OIR started work in November of 2016, and MPD staff have been engaging fully with OIR during their work. OIR staff have made multiple visits to Madison and engaged in extensive meetings with various MPD staff members and other community stakeholders. Also, MPD personnel have provided thousands of pages of documents to OIR at their request. My impression of OIR is that they are professionals with significant experience and expertise in contemporary policing. Many of the subjects that they are focusing on are identical to those that the CCEC Subcommittee has explored and addressed in its draft recommendations.

The relationship between the Ad Hoc Committee, the CCEC Subcommittee and OIR is unclear to me. The relevant stated objective of the CCEC Subcommittee is to "Make recommendations to the Council on short-term policy, procedure and training while waiting for the results of the Ad Hoc Review of Police Policies and Procedures." This seems, at a minimum, to encroach on the mission of the Ad Hoc Committee and the work that OIR is being paid to do. Also, the Subcommittee recommendations are anything but short-term. Indeed, some of the recommendations – even if fully embraced by MPD and pushed forward starting today – could not be implemented before the anticipated conclusion of OIR's work (implementing a formal early intervention system, for example). And if OIR's conclusions/recommendations conflict with the Subcommittee's, it is unclear to me which takes precedence.

MPD will continue to explore improvements in all aspects of our operations. However, I feel that the forthcoming OIR report and any recommendations from the Ad Hoc Committee should be the basis for discussions about MPD moving forward. I have been impressed with the professionalism,

real-world experience and expertise of OIR staff, and it appears to me that OIR is in a better position to provide informed recommendations than the CCEC Subcommittee. My observations suggest that OIR is engaging in a thorough and balanced review process, and I am confident that their efforts will result in a quality work product that will benefit MPD and the community.

I also feel compelled to address the compulsory language used in the Subcommittee's draft recommendations ("The Council will direct the Chief of Police..."). Wisconsin law provides that authority over police departments is balanced between the Chief of Police, the Mayor, the Common Council and the Police and Fire Commission. How these competing authorities intersect is not always clear, and the City Attorney's 2005 memo (referenced in the Subcommittee's draft recommendation document) does an excellent job of reviewing the topic. The memo suggested that the authority of the Council to direct police operations would need to be evaluated on a case-by-case basis. I will defer to the City Attorney for opinions on the legal authority of the Common Council to direct police operations in general, and with respect to the specific topics included in the Subcommittee's recommendations.

As a matter of public policy, however, I feel that it is unwise for the Common Council to attempt to direct police operations as contemplated in the Subcommittee's recommendations. The State of Wisconsin has a long tradition of insulating policing from political influence. This philosophy is implemented through 62.13 of the Wisconsin Statutes. To my knowledge, Madison's Common Council has never sought to direct police operations through a written order. Should this occur, and the Common Council seek to direct police operations, a troubling precedent will have been set. I fear that this would serve as a significant deterrent to future potential Madison Police and Fire Chiefs, as prospective candidates will be unwilling to have their authority subject to undue political influence. It would also open the door to continued political influence of MPD and MFD.

Also, the scope and duration of a Common Council directive is unclear. How long is the written order effective? For the term of that Council? Forever? Take the example of the Common Council directing that certain language be inserted into a Madison Police Department Standard Operating Procedure (SOP). If at some point – a month later; a year later; a decade later – the Chief determines that the language needs to be changed, does he or she have the authority to do so? Or does the Chief need to seek Common Council approval to change the language? If the latter is the case, then it follows that the Department would need to track which words in its SOP's were drafted through the traditional process and which were directed by the Common Council. This seems unworkable.

So, I cannot endorse any recommendation that seeks to "direct" Madison Police Department operations, particularly to the degree that the Subcommittee's draft recommendations do. With that being said, I will address each of the action items viewing them as recommendations.

Action Item 1: The Common Council of the City of Madison will direct MPD to issue a SOP that explicitly details the goals, tactics, policies, and procedures to deal with an EDP. In order to do so MPD should refer to the International Association of Chief of Police's model policy Responding to Persons Affected by Mental Illness or in Crisis (see Appendix) and the NYPD Patrol Guide related to Mentally Ill or Emotionally Disturbed Persons (see Appendix).

Many elements of crisis resolution referred to in the IACP and NYPD documents are substantively incorporated into various MPD SOP's, including: De-escalation; Mental Health Incidents/Crises; Intoxicated and Incapacitated Persons; Barricaded Person Incidents; Hostage Situation Incidents and Active Shooter Incidents. For example, MPD's Mental Health Incidents/Crises SOP states:

Responses to situations which involve abnormal behavior should reflect sensitivity to the needs of the people involved, concern for officer safety and safety of others at the scene, and concern for alleviating the situation in a reasonable manner. The goal in all crises stemming from mental illness is to utilize the least restrictive measures to secure the welfare of all those concerned, connect individuals with mental illness to needed services and divert them from the criminal justice system whenever possible.

These concepts are also reflected in MPD training (pre-service and in-service) and State of Wisconsin training curricula (Defense and Arrest Tactics; Professional Communication Skills).

Action Item 2: *The Common Council will direct the Ad Hoc Committee to investigate other possible supports for MPD officers interacting with EDP's. The Subcommittee would encourage further exploration into the types of training and ongoing training strategies that will improve interactions with EDPs. In particular, the Subcommittee would recommend a detailed analysis of ProTraining which is an evidenced based practice proven to reduce overall use of physical force and the use of weapon force in police calls. The Subcommittee would recommend the Ad hoc Committee undertake an evaluation of the feasibility of hiring social workers to work with officers to support interactions with EDP's.*

As this recommendation is addressed to the Ad Hoc Committee I will not respond in detail. I will, however, point out that MPD is recognized as a national leader in police response to mental health issues. For years, MPD has assigned officers to serve as mental health liaisons in addition to their regular duties. Two years ago, MPD implemented full-time Mental Health Officers (MHO's) in each district. These officers work proactively with other service providers to positively impact those suffering from mental illness and improve the quality of MPD encounters with those individuals. A social worker with Journey Mental Health is already embedded with MPD and assigned on a part-time basis to work with the MHO's. This initiative is already in the process of expanding, and should have three part-time social workers assigned later this year. I feel that this is an excellent model for delivering quality service, and am certainly willing to entertain expanding it. However, these efforts – both implementation of the MHO program and embedding non-MPD service providers with MHO's – have staffing and budgetary implications.

The Madison Police Mental Health Team 2016 annual report provides an excellent overview of MPD's efforts to address mental health issues:

<http://www.cityofmadison.com/police/documents/MHOYearEndRpt2016.pdf>

Action Item 3: *The Common Council of the City of Madison will direct MPD to issue updated MPD use of Force and the Use of Deadly Force SOP's that explicitly incorporate the duty to intercede and de-escalate.*

These concepts are already expressly addressed in MPD's Code of Conduct and Standard Operating Procedures. MPD's Code of Conduct includes a specific provision outlining an officer's duty to intercede:

13. Duty to Intercede

Any officer present and observing another officer using excessive force, or engaged in unlawful conduct, or in violation of the Madison Police Department's Code of Conduct has an affirmative obligation to intercede and report.

Note that the Code of Conduct contains the critical, values-based expectations of MPD employees. While many SOP's simply outline procedures, the Code of Conduct reflects a higher level of expectation: "Our Code of Conduct and Core Values define us and directs our behavior; thus they require strict adherence. Our Standard Operating Procedures detail the means to perform our duties in a reasonable and lawful manner." The Code of Conduct is only eight pages, incorporating MPD's mission statement, core values and twenty-two of the most critical expectations of employees. The inclusion of the Duty to Intercede in the Code of Conduct reinforces its importance to the organization.

MPD has also incorporated a full SOP on de-escalation. Implementation of this SOP coincided with an eight-hour training session on de-escalation for all commissioned MPD personnel. The full SOP can be viewed here:

<http://www.cityofmadison.com/police/documents/sop/Deescalation.pdf>

Action Item 4: *The Common Council of the City of Madison will direct MPD to incorporate language adapted from NYPD Force Guidelines to emphasize an officer's duty to preserve life into the MPD Use of Force and the Use of Deadly Force SOP's.*

The specific language recommended by the Subcommittee is:

The primary duty of all MPD officers is to protect human life, including the lives of individuals being placed in police custody.

Similar language is currently included in one of MPD's Core Values:

HUMAN DIGNITY

We acknowledge the value of all people and carry out our duties with dignity, respect, and fairness to all. Furthermore, the Department recognizes and respects the value of all human life.

Relevant language is also included in MPD's Use of Deadly Force SOP, which states in part, "Consistent with our Mission Statement, the Madison Police Department believes in the dignity of all people and recognizes the value of human life." The priority to protect human life is also reflected in other MPD SOP's. For example, the MPD SOP's addressing barricaded subjects, active shooting incidents and hostage incidents all include the Department's objectives in resolving those types of incidents:

The objectives of this department in dealing with barricaded person, hostage and active shooter incidents are:

1. Preservation of life.
2. Apprehension of perpetrator(s) using a reasonable amount of force.
3. Securing available evidence to assist in the appropriate disposition of the perpetrator(s).

The first and foremost objective for each is, "preservation of life." [Note that these SOP's are not publicly posted as they contain details about MPD tactical response.].

In addition, I feel that the Department reinforces the importance of human life in many other ways. As an example, MPD recognizes successful lifesaving efforts with awards or citations at the annual MPD awards ceremony. Many MPD officers have been recognized in this way for saving a life; in many instances the individual whose life was saved has attended the ceremony. Also, MPD has made the effort to equip officers with Naloxone, and dozens of lives have been saved through its application.

With that being said, the concept behind the language recommended by the Subcommittee is certainly something I support and feel is aligned with MPD's values and philosophy. I will have internal discussions with my command staff about the appropriateness of incorporating similar language into MPD's Code of Conduct and/or SOP's.

Action Item 5: The Common Council directs the Ad Hoc Committee to evaluate the above principles and determine whether and how they may be addressed in MPD policies, practices and procedures.

The principles that this action item refer to focus on use-of-force, and include necessity, proportionality, etc. As this recommendation is addressed to the Ad Hoc Committee I will not respond in detail. However, I feel that these concepts are all adequately addressed currently by MPD's Code of Conduct, SOP, and the State of Wisconsin Defense and Arrest Tactics (DAAT) system (which governs police use-of-force pre-service training in Wisconsin).

Action Item 6: The Common Council directs MPD to develop programming to build mental health and resilience, and to provide cost estimates and a timeline for this work.

The MPD has a long history of addressing concerns related to officer well-being. Many of the practices in place now address the concerns surrounding significant events that officers experience as a portion of their daily duties. Services are also available through MPD Peer Support and the

Employee Assistance Program to address concerns of officers.

During our on-going collaboration with the Center for Healthy Minds the need to have additional resources to maintain mental health and resilience for officers has become clear. After meeting with staff from the Center in January, MPD staff began to look at providers of services that address a more preventative model of mental health and resilience. This would be in addition to existing efforts.

Most recently, MPD has been in discussion with a vendor of resilience programming that may meet the needs of the Department. The initial plan is to provide this content to the officers entering the Academy in the Fall of 2017, following with a plan to train other officers throughout MPD.

In addition to the resilience training model being considered, MPD is exploring ways to provide other preventative strategies to support mental health, resilience and well-being of officers. We recognize that programming to improve mental health and fitness, is not a “one-size” fits all, and would like to offer alternative programming for those who choose to participate. Consistent with the work of the Center for Healthy Minds, we are exploring cost effective ways to offer Mindfulness Based Stress Reduction (MBSR) programming. MBSR programs have been used widely in the health care industry with proven effectiveness, although these programs have a higher training cost per person.

Action Item 7: The Council directs MPD to reinstate a back-up policy most recently utilized in November 2016. That policy required officers to wait for backup before approaching subjects, unless an officer reasonably believes there is a substantial risk.

The original language was incorporated into MPD’s CFS Dispatch Guidelines SOP:

Officers shall not disregard backup, if so assigned by dispatch. Additionally, officers shall wait for backup before physically approaching any involved subject(s), unless an officer reasonably believes there is a significant risk of bodily injury to any person(s).

There were two distinct components to this language change. First, when two (or more) officers are sent to an incident by dispatch, one officer cannot disregard the other and respond solo. Second, once at the scene, officers cannot approach anyone alone unless a significant risk of bodily injury exists.

I did not intend for this SOP change to be a final product. After it was implemented, I sought direct feedback on it from MPD officers (attending a complete cycle of MPD inservice training, attended by all commissioned MPD employees) and determined that modifications would be needed.

This input demonstrated that the revised SOP could result in a number of unintentional (and sometimes absurd) consequences. For example: two officers are dispatched to a car accident in the middle of the day. The first officer arrives, parks and activates his/her emergency lights. However the SOP would prohibit the officer from contacting the citizens involved in the accident until the second officer arrives. Indeed the officer would not even be permitted to tell the citizens that he/she was required to wait...the citizens would simply wonder why the officer was sitting in their squad without doing anything. In addition to creating an uncomfortable interaction, adverse

tangible results could also result (more time until the accident is cleared, resulting in greater traffic back-up and safety issues, etc.).

In addition, the original SOP language only applied to incidents that officers were dispatched to, and did not impact self-initiated activity. So, an officer could self-initiate a traffic stop or other encounter (which might very well be more risky than many dispatched incidents) alone without running afoul of the SOP.

These and countless other examples demonstrated that the SOP needed fine-tuning. So, language in the CFS Dispatch Guidelines SOP was modified to read:

Officers shall not disregard backup, if so assigned by dispatch, prior to arrival at the scene and assessment of the situation.

Under the new language officers are still not permitted to disregard backup while responding to a multi-officer call, until an officer has arrived on scene, assessed the situation and determined that additional officers are not necessary.

The Department's De-escalation SOP was also released at the time the CFS Dispatch SOP was updated, and included language related to back-up, including:

The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used. When feasible, officers should approach an individual whom they anticipate may be taken into custody (criminal suspects, potential chapter 51 protective custody/emergency detention, etc.) with back-up present or immediately available.

Current language in these two SOP's provides more realistic guidance for officers. The truth is that MPD officers engage in one-on-one encounters with citizens hundreds of times a day. If MPD's authorized strength was doubled and we deployed officers in two-officer patrol squads, there would still be countless one-on-one encounters. The original SOP language is simply unworkable, and would result in reduced service to the community.

Action Item 8: *The Council will direct the Chief of Police to provide a quarterly written and verbal updates to City Council. The updates will be provided as regular agenda items at either Council or the Common Council Executive Committee and will include the following information: 1) any changes to Code of Conduct and SOP; 2) any changes in training, 3) any new initiatives, 4) MPD arrest data by reason for arrest and race/ethnicity, 4) parking enforcement revenues, and 5) use of force incidents.*

MPD currently provides updates through a variety of mechanisms:

- Monthly updates by MPD to the Public Safety Review Committee.
- Quarterly public releases of data, to include:
 - Traffic stop data
 - Use of force data

- o IBR crime data
- o Arrest data
- o Discipline/complaint data
- o Compliment/performance recognition data

This information is all available to the public on the MPD website (note that complaint/compliment information has been released but not posted to the website due to an oversight; future releases will be posted to the website).

- Public releases/blogs/media contacts on new MPD initiatives.
- Posting of current MPD SOP's on the MPD website.
- Information shared by me through my blog and regular podcast.
- Information shared by District Captains through their district blotters.
- Information shared through MPD social media (Twitter, YouTube, Facebook).
- Attendance by MPD personnel at Common Council meeting and Committee meetings when needed to address any issues/topics related to public safety.
- Regular communication between MPD Captains and Alders.

I am committed to transparency in all aspects of MPD operations, and believe that MPD's efforts to proactively share information reflect this. I feel that the ideal mechanism for MPD to share information with the Common Council is through monthly updates to the PSRC. We can certainly compile requested data points and share those with the PSRC quarterly. I do note, however, that providing some of the updates might be impractical. For example, SOP's are regularly updated with non-substantive changes to stay current, and providing regular updates on these minor changes may prove to be a cumbersome effort that does not shed any meaningful light on MPD operations.

Action Item 9: *The Common Council will develop a policy governing the purchase and use of all surveillance equipment employed by all City agencies including MPD. The policy will also address data management and storage as well as clear consequences for policy violations.*

As this recommendation is addressed to the Common Council, I will not respond in detail. However, I will point out that a City APM (3-17) already exists related to City use of surveillance cameras. Also, MPD has a number of SOP's that specifically address these issues, including:

- In-Car Video System
- SWAT Body Worn Cameras
- Video and Audio Surveillance
- Third Party Database Use and Dissemination
- Recording Suspect Interviews
- Unmanned Aircraft Systems (implementation pending)

Action Item 10: *The Common Council directs the Ad Hoc Committee to provide a review of the feasibility of external oversight of MPD internal investigations.*

As this recommendation is addressed to the Ad Hoc Committee I will not respond in detail. However I will point out that Wisconsin law already provides for independent oversight of MPD investigations through the Police and Fire Commission. When conducting internal investigations, MPD works cooperatively with other City Agencies (Human Resources, Civil Rights) when circumstances warrant. Finally, MPD has requested – and will continue to do so when appropriate – outside law enforcement agency assistance for certain internal investigations.

Action Item 11: *The Common Council directs the Ad Hoc Committee to further explore the IA Pro capabilities for early warning and intervention. In addition, the Subcommittee recommends the Ad Hoc Committee speak with the University of Chicago Data Science for Social Good statisticians to explore collaboration to develop a predictive early warning system.*

As this recommendation is addressed to the Ad Hoc Committee I will not respond in detail. However, MPD is already moving forward with utilizing the early intervention capacity in IA Pro. Indeed, MPD has been working towards a formal early intervention process since long before the Subcommittee was formed, and has been utilizing an informal process in the interim.

Action Item 12: *The Common Council directs the Ad Hoc Committee to provide an implementation plan for a root cause analysis process at MPD.*

As this recommendation is addressed to the Ad Hoc Committee I will not respond in detail. I will state, however, that I am intrigued by this concept. The National Transportation Safety Board (NTSB) utilizes a root cause analysis process when conducting investigations. The objective is to determine the cause of an incident (like an aviation crash, for example), not to assign blame. Indeed, much of the NTSB's work product is not admissible in court. So, while the concept of viewing police critical incidents through this prism is certainly interesting, there would be significant complexities with implementing such a process, and legal changes at the state and possibly federal level would likely be required for it to be effective.

As indicated, I feel that the forthcoming OIR report should be the basis for discussions about MPD and any potential operational changes. I also cannot endorse any effort by the Common Council to direct MPD operations. The Subcommittee recommendations generally reflect issues already addressed by MPD in existing SOP, training, operations or planning.