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MEMORANDUM

TO: Police Civilian Oversight Board Members

FROM: City Attorney Michael Haas
Assistant City Attorney Marci Paulsen

DATE: January 26, 2021

RE: Responsibilities of Police and Fire Commission and Public Safety Review Committee

This memorandum summarizes the roles and responsibilities of the Police and Fire Commission (PFC) and the Public Safety Review Committee (PSRC) and their relationship to the Civilian Oversight Board (COB). Each body has separate but related responsibilities established by Wisconsin Statutes and Madison General Ordinances. While the lanes of authority are defined in the law, there are some aspects of the working relationship which will become clear only when the Board and Independent Monitor start to work through their procedures and initiatives.

Police and Fire Commission

Of the three bodies, the PFC is the only one that draws its authority from state law. Wis. Stat. Sec. 62.13 establishes the authority, responsibilities and membership of the Commission. In short, the PFC is the only body responsible for the hiring, promotion, discipline and termination of commissioned police officers and the Police Chief. The PFC is made up of five resident members appointed by the Mayor for five-year terms.

Attached are three documents which describe the PFC and its relationship to the COB – correspondence from PFC legal counsel Jenna Rousseau and from UW Law School Professor and COB Member Keith Findley, and a memorandum from the Wisconsin Legislative Council, which serves as legal counsel to the Wisconsin Legislature. I highly recommend that Board members review these documents for two reasons. First, they outline in detail the authority and procedures of the PFC and how they relate to the work of the Oversight Board, and it would be repetitive to duplicate those explanations here. Second, these documents illustrate the public discussion and debate which occurred prior to the creation of the COB and the Independent Monitor position by the Common Council.

In particular, the correspondence from Attorney Rousseau and Professor Findley provided a greater community understanding of the relationship between the PFC and the COB, as well as a common set of expectations regarding the extent of the Board's authority.

The COB will have opportunities to take a deeper dive into the procedures used by the PFC and the Police Department in hiring, promotion and discipline. For now, the key point to keep in mind is that the Board may review, consider, and gather public input regarding a wide variety of policies and decisions of the Police Department and the PFC, but the Board's authority generally culminates with the ability to make recommendations to MPD and the PFC. As stated in Professor Findley's correspondence, the Board

...will have no authority to impose discipline, reverse disciplinary decisions, or mandate any other response by the Madison Police Department, the PFC, or any other body with statutory or ordinance-based authority over these matters. Their role will instead be simply to compile data and evidence and make *recommendations* based on what they find.

The Board's ability to effectively gather and synthesize public input and to thoroughly examine police practices, policies and issues is a task of the COB as outlined within the Ordinance. At times it may disagree with actions of MPD or the PFC, or it may seek changes that are not permitted under applicable law or that are out of the control of MPD or the PFC. But, as Professor Findley also noted, the COB may also serve to assist or complement the work of the PFC by "providing a method for investigating and developing facts in a regularized fashion, appointing counsel and making recommendations (not final judgments) to the PFC." This is a responsibility the Board may exercise whether it is examining disciplinary policies, collecting public feedback regarding the Police Chief's performance, creating its annual report, or reviewing policies that are not under the PFC's purview,

Public Safety Review Committee

The PSRC is a regular standing City Committee created by Madison General Ordinance § 33.22. It is composed of nine members, including a designee of the Mayor, three Alders, five resident members, and one alternate resident member. The duties of the PSRC are described in MGO § 33.22(4) as follows:

(4) Duties The work of the Public Safety Review Committee shall be advisory to the Mayor and the Common Council to assist them in the performance of their statutory duties regarding the police and fire departments. The role of the Public Safety Review Committee shall in no way interfere with the lawfully prescribed powers and duties of the Common Council, the Police and Fire Commission, the Mayor, or the Chiefs of the respective Police or Fire Departments. The Public Safety Review Committee may, in the performance of its duties:

(a) Review service priorities and capital budget priorities of the Police and Fire departments;

(b) Serve as liaison between the community and the City on public safety issues;

- (c) Review annually and make recommendations to the Mayor and the Common Council regarding the annual work plans and long-range goals of the departments.

Several observations may be made based on this ordinance's description of the PSRC. First, it is an advisory body and its actions may result in recommendations to the Common Council and Mayor. It also does not have authority to interfere with the statutory duties of the PFC. Second, the ordinance directs the PSRC to serve as a liaison between the community and the City regarding public safety issues which a role similar to that assigned to the Civilian Oversight Board. Depending upon the focus and initiatives of the two bodies, there may be some overlap in the functions of the PSRC and the COB. A logical division of duties between the COB and the PSRC could also lead to greater efficiency and effectiveness in addressing police issues.

It is also possible that the role of the PSRC may evolve with the creation of the COB, either due to the Council reviewing the charge of the PSRC or to the PSRC altering its own focus. In 2020, for instance, the PSRC spend significant time considering the "8 Can't Wait" recommended practices, MPD's response to demonstrations and subsequent violence, and the recommendations of the Ad Hoc Committee on Police Policies and Procedures. The PSRC recently recommended that the Council refer the MPD Policy and Procedure Review Ad Hoc Committee's recommendations to the COB, and there may be other topics the COB considers which would previously be under the jurisdiction of the PSRC.

Closed Session Authority

The Board also requested an overview of the COB's authority to review decisions of the PFC and the rules for those bodies convening in closed session. The Open Meetings Law requires that governmental bodies convene in open session unless there is a specific exception that permits a body to convene in closed session. Wis. Stat. § 19.85(1) allows governmental bodies to convene in closed session to deliberate concerning a case which was the subject of a judicial or quasi-judicial hearing before the body, and to consider employment, promotion, compensation or performance evaluation data of any public employee over which the body has jurisdiction or exercises responsibility.

When the PFC conducts a disciplinary hearing, it does so in open session but it convenes in closed session to deliberate regarding the result of the hearing. It may also convene in closed session to consider hiring and promotion decisions or to consult with its attorney on pending litigation.

These exemptions do not apply to the responsibilities of the Civilian Oversight Board with regard to MPD employees. The Board is not authorized to hold judicial or quasi-judicial hearings regarding specific cases of police activity or conduct. It also does not exercise jurisdiction over MPD officers. It can certainly discuss and make recommendations related to specific decisions of MPD or the PFC but it must do so in open session. The COB will exercise jurisdiction over the Independent Monitor and other employees of the Office of Independent Monitor. In evaluating the performance of the Monitor and its other employees, the Board may convene in closed session.

Assistant City Attorney Marci Paulsen and I will be available to further discuss this information at the Board's meeting.