

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: April 27, 2017

MEMORANDUM

TO: Heather Allen, Legislative Analyst

FROM: Marci Paulsen, Assistant City Attorney

RE: Draft Report of Common Council Executive Committee (CCEC)
Subcommittee on Police and Community Relations on
Recommendations on Police Policies and Procedures dated 4/14/17

You asked me to review the above mentioned report. Since this is a report issued by the CCEC Subcommittee and not our office, I have limited my review to any potential legal issues within the report. I will outline those below. We understand that this is a draft report and some of the recommendations may change. I am commenting on the draft that was given to us.

The report indicated that Freedom Inc. provided a proposal of restructuring the police department and that such restructuring is authorized under Wis. Stat. § 62.13(2e). This statute does not permit the creation of a police department controlled by residents. While the statute permits a combined protective service department, this does not mean that how the department is governed maybe changed. Wis. Stat. § 62.13(1) clearly establishes that any police department within the City will be overseen by a board of police and fire commissioners. The statute specifically establishes the number of commissioners on said board and that they are to be appointed by the mayor.

The report provides a list of “Action Items”. Below, I will outline any potential legal issues on each “Action Item”, individually based on a review of the relevant statutes and previously issued City Attorney opinions.

Action Item 1:

It is within the purview of the Common Council to direct MPD to “issue a SOP that explicitly details the goals, tactics, policies and procedures to deal with an EDP”.

This is permissible because it is a general order and leaves the specifics of the SOP to the discretion to the chief based on his expertise. The recommendations include requesting that MPD review and consider certain principles and reports. This is a permissible request because it is not requiring MPD to implement any specific internal actions.

Action Item 2:

Under the authorizing resolution, the Ad hoc committee was tasked to conduct a “complete and thorough review of the Madison Police Department’s policies, procedures, culture and training...” While the Ad hoc committee may issue an opinion on whether having social workers within MPD is an appropriate goal, it is not within the purview of the Ad hoc committee nor within their authority to undertake an evaluation of the feasibility of hiring social workers to work with officers. The Ad hoc committee has no ability to control city budget or the hiring of additional staff.

Action Item 3:

It is not within the purview of the Common Council to direct MPD to update its use of force and deadly force policy to incorporate the duty to intercede and de-escalate a situation. While under Wis. Stat. § 62.11(5) the Common Council is authorized to provide general direction to MPD, it is within the Chief’s discretion to establish the day to day functions and operation of his department. The matter of appropriate use of force and the appropriate level of force used by a police officer is a specialized and technical area of law enforcement and therefore should be established by the Chief based on his expertise. In fact, Wis. Stat. § 66.0511(2) requires the chief to develop a use of force policy. This statute specifically places this onerous job on the Chief not on the Common Council. The Committee can certainly recommend that the Chief consider these items.

Action Item 4:

See response in Action Item 3. The Common Council does not have the legal authority to direct MPD to incorporate specific language into a use of force policy.

Action Item 5:

The Common Council is authorized to provide this direction to the Ad hoc committee. However, the Ad hoc committee's role is to provide recommendations to the Common Council not to implement or require specific changes to MPD policies.

Action Item 6:

Under Wis. Stats. § 62.11(5) the Common Council is authorized to act for the government and good order of the city and for the health, safety and welfare of the public. Therefore, it is within its discretion to direct MPD to develop further mental health programming.

Action Item 7:

It is not within the purview of the Common Council to direct MPD to include specific language in its back-up policy. The Common Council is authorized to provide general direction to MPD but it is within the Chief's discretion to establish the day to day function and operation of his department. The matter of when back-up should be utilized is a specialized and technical area of law enforcement and therefore should be established by the Chief based on his expertise.

Action Item 8:

Under Wis. Stats. § 62.11(5) it is within the discretion of the Common Council to direct the Chief to provide regular written updates.

Action Item 9:

Under Wis. Stats. § 62.11(5) and its budgetary role, it is within the discretion of the Common Council to establish a citywide policy, after review by the Office of the City Attorney to insure legal compliance, on the use of surveillance.

Action Item 10:

The Common Council is authorized to provide this direction to the Ad hoc committee. However, the Ad hoc committee's role is to provide recommendations to the Common Council not to implement or require specific changes to MPD policies.