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OFFICE OF THE CITY COMMISSION

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March 16, 2021

To: Mayor Nan Whaley
Commissioner Jeffrey J. Mims, Jr.
Commissioner Christopher L. Shaw
Commissioner Darryl Fairchild

From: Commissioner Matt Joseph

Re: Police Reform Working Group Recommendations- Oversight
Committee

On March 12, 2021, the Oversight Working Group co-chaired by Mr. Brandon McClain and myself, passed a series of recommendations regarding the CAB, previously known as the Citizens' Appeals Board. The committee recommends the following to the city regarding the Pre-Appeal Process:

1. The appeal should be filed within 30 days from the date of the PSB Findings letter, unless CAB makes an exception for a reasonable cause.
2. The Findings letter from PSB to the Complainant should include detail as to the specific sections of code or policy that PSB considered in their decision-making process.

Below are the recommended changes to the Appeals Board make-up, structure, and process.

1. Change the makeup of the board from 5 members to 7 members. There will be public comment, or another reasonable form of community input arranged for these appointments.
 - The board shall be called the Community Appeals Board.
 - One member shall be an attorney.
 - One member shall be a former City of Dayton police officer with at least 10 years of experience.
 - One member shall be a member of an organization dedicated to promoting minority rights and well-being.
 - One member shall be a member of an organization dedicated to promoting immigrant rights and well-being.
 - Three members shall be selected at large.

- Remove from the ordinance the prohibition against individuals with criminal convictions.
 - There will be five ex-officio non-voting members (rather than three):
 - City Manager or designee from CMO
 - Chief of Police or designee from DPD/PSB.
 - Independent Accountability Auditor (“IAA”)
 - Civil Service Representative
 - Executive Director of the Human Relations Council
 - The Community Appeals Board will be housed within the Human Relations Council and provided staff/funding to carry out its operations.
 - The application to serve on the CAB will be made available online or through a paper form.
2. The voting members of the CAB will serve for three-year terms.
 - Terms will be staggered to ensure we do not lose institutional knowledge.
 3. The Community Appeals Board will meet once per month at a regularly scheduled date and time. Emergency meetings, training meetings, and working/strategy sessions may be called by the Chair or a majority of voting members whenever needed.
 - Professional Standards Bureau will brief the Community Appeals Board on a quarterly basis, and cover the topics specified in the ordinance, including the nature and types of cases and the dispositions of complaints, and respond to other CAB requests for information.
 - Monthly CAB meetings and the quarterly briefings by Professional Standards Bureau at those meetings should be open to the public and audio recorded.
 - If the Board has no appeals in a month, they may use their meeting time to conduct training or review policies, procedures, and recommendations.
 4. The Community Appeals Board will add a 4th function to its operations, the ability to request the IAA to review cases that CAB identifies as in need of audit
 - Its current three duties are:
 1. To hear monthly appeals
 2. To hear quarterly DPD/PSB briefings; and
 3. To review policies, procedures, and make recommendations to the City Commission, City Manager, and Chief of Police.
 5. The Community Appeals Board must be provided funding for a Legal Advisor.
 - Funding will be provided for the Community Appeals Board to be provided an attorney for each appeal.
 - The Legal Advisor will work with Community Appeals Board members to draft the final report and recommendations. The report must be

submitted to the City Manager, City Commission, Chief of Police, Independent Accountability Auditor, Civil Service Representative, HRC, and Policy Review Committee.

6. The Appeal Process will give Complainants the automatic right to come before the Board if sufficient information is provided in the appeal form, and will enact the following process changes:
 - The appeal form should be submitted within 30 days from the date on DPD/PSB's letter of findings; however, the Board may make reasonable exceptions.
 - After receiving the appeal, the CAB Chairman, with the assistance of staff, will confirm the matter is appealable, and begin the process.
 - CAB may request that the IAA review the complaint and initial investigation. The IAA will conduct a review of the case file and take all necessary steps in accordance with the IAA's established policies, processes, and procedures.
 - When an appealable matter is filed, and information is sufficient, the Complainant will be notified of the date of the hearing and invited to present testimony under oath.
 - After filing an appeal and being notified of their hearing date, the Complainant will be offered the opportunity to work with a staffer at the Dayton Mediation Center to prepare for the hearing. The cost will be borne by the City.
 - The Complainant will be notified of their right to bring an advocate or support person of their choice to the hearing.
 - The Complainant will be notified that the CAB will provide an interpreter, if needed.
 - The officer(s) involved in the incident will be invited to give voluntary testimony, unless the complainant or a majority of the CAB requests that the officer not be invited. If the officer decides not to give testimony, that officer's sworn statement from the alleged incident (in the PSB file) will be read into the CAB record, which becomes a matter of public record.
 - A DPD investigative representative will be present to answer questions related to the investigation that was conducted, and police practices and procedures in general.
 - Other witnesses (such as nurses who treated the victim, bystanders, etc.) may be subpoenaed to give testimony and/or provide evidence, which may be necessary to hear the appeal.
 - The hearing will be open to the public (as permitted by law) and audio recorded.

7. The DPD/PSB must share certain documents automatically when an appeal is filed.
 - After an appeal is filed, DPD/PSB shall immediately provide the investigative file to CAB, HRC, and the Legal Advisor.

- Such document sharing shall include, but not be limited to: the complaint, reports from the investigation, interview notes and recordings, pictures, cruiser footage, body-worn camera footage, the policies applicable to the situation, the letter of findings (which should be more descriptive than the current template and should include specific findings re: policies, rules, and laws analyzed during the initial investigation), and any other evidence used to make a determination.
8. After considering the appeal, the Community Appeals Board shall make a determination, using the preponderance of the evidence standard, and may do the following:
- Concur with the findings of the investigation.
 - Not concur with the findings of the investigation, and recommend that the investigation of the complaint should have been:
 - Sustained: Disclosed evidence indicating the officer committed the alleged acts.
 - Not Sustained: No evidence to prove/disprove the alleged incident occurred.
 - Exonerated: Act did occur, but was justified, lawful, and proper.
 - Unfounded: Acts alleged did not occur.
 - The Complainant and the officer involved will be notified of the disposition.
 - The Complainant will be provided a post-hearing survey (voluntary) so that CAB can collect data about process, procedure, outcome, recommendations, etc.
9. The Community Appeals Board determination should be presented in writing to the City Manager, City Commission, Chief of Police, Independent Accountability Auditor, Civil Service Representative, HRC, and Policy Review Committee. The CAB Chair, or designee from the CAB, may be asked to speak on behalf of the CAB at Commission meetings regarding cases and operations and will be required to give an annual presentation along with the annual report of policy and procedure recommendations.
- The case report is a matter of public record.
 - The case report shall include the Board's findings, a summary of the decision made, and any recommendations.
 - The City Commission will issue a response to the recommendations in a timely manner.
 - The City Commission may make a referral to the City Manager and/or to the IAA for proper policy changes and potential remedy, as per city policy and procedure.
 - The Board shall submit to the Commission an annual report of operations describing the number and types of cases, a budget report, and other findings and recommendations.

- The annual report could include policy and procedure recommendations.
- The City Commission will respond to those policy and procedure recommendations within a reasonable period of time.
- The City Commission will monitor the operations of the CAB and from time to time enact process improvements.

10. Participating in a training program will be mandatory for Community Appeals Board members.

- Funding will be provided for Board members to attend and continue a comprehensive training program.
 - Such training could include Annual National Association for Civilian Oversight of Law Enforcement (NACOLE) training or state, local, and regional training.
 - The training shall include an annual training session along with other training at a regularly scheduled meetings or at a dedicated second meeting per month.
 - Board members should be provided with monthly material curated from local, state, and national organizations discussing trends, developments, etc.
- CAB shall be provided appropriate staff for administrative and clerical duties regarding appeals, hearings, scheduling, training, and writing the annual report to Commission.

11. There could be an education and outreach campaign for the Community' Appeals Board.

- The Committee shall recommend an education and outreach campaign so that Community have a better understanding of what CAB does, when meetings are held, and how to file appeals, and how to apply to serve on CAB.
- Recognizing that individuals are more likely to trust people and organizations most familiar to them, CAB will make available appeals submission training and appeal forms to agencies/organizations/churches/etc. who are likely to assist complainants, to ensure that individuals can work with people they trust to file an appeal.
- This effort could be combined with education and outreach efforts for how to make an initial complaint about police misconduct.

Additionally, the members of the Police Oversight Working Group requested an addendum to our recommendations as outlined below:

Addendum:

- Representatives from the Police Oversight Working Group will meet with either a portion or the whole Working Group responsible for Discipline, inform them of the issue we encountered; namely, the possibility of potential disciplinary action in the case of the CAB sustaining an appeal,

and request that they take our perspective on this situation into account as they make their recommendations on discipline.

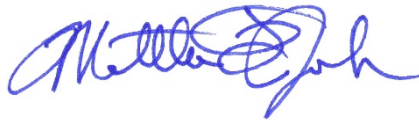
- Members of the Police Oversight Working Group intend to submit to the Joint Working Group (aka the Supergroup) additional suggestions for reforms and improvements in areas not covered by the Oversight Working Group Charter, for consideration and potential implementation.

Per the working group's charter, the Dayton City Commission has 30 days to respond to the group with one of three options: accept the recommendations, reject the recommendations, or ask the group for further information to be able to evaluate the recommendations.

We understand that accepting a recommendation does not mean that it will be implemented within the 30-day time window. Instead, it means that the City Commission directs the City Manager, Dayton Police Department, or other applicable entity to take action to implement these recommendations as soon as is practicable.

Thank you for your consideration of these recommendations.

Sincerely,



Matt Joseph
Commissioner

Cc: Ms. Dickstein
Mr. Parlette
Ms. Lofton
Ms. Doseck
Ms. Walker
Chief Biehl