

## COMMITTEE OF THE WHOLE

Tuesday, September 7, 2021– 6:30 p.m.

Council Chambers – Olean Municipal Building

Present: Members: Alderman Crawford, Alderman Witte, Alderman Panus, Alderman Gonzalez, Alderman Barnard, and Alderman Robinson. Others: Mayor William Aiello; Jack Hart, City Attorney; Ron Richardson, Police Chief, and Tiffany Taylor, Managerial Confidential Administrative Secretary.

### 1. Roll Call

Alderman Crawford called the meeting to order at 6:30 p.m. and asked that the record show that all committee members were present except Alderman Anastasia, who was excused.

### 2. Unfinished Business

None

### 3. New Referrals for Consideration

#### a. Civilian Review Board Work Session

Alderman Crawford explained that he had some communication earlier today with the City Attorney on the updated opinion, which Mr. Hart passed out to the Council. He explained that the Council President requested that he remove the desiccation of “Confidential Attorney-Client Memorandum”. He explained that he saw many legal concerns of the drafted legislation that he enumerated in that memorandum and he felt from a policy perspective that the proposal was extreme and that it could conceivably create issues with the good idea that there be some form of citizen review. He explained that he really couldn’t write anything else, because that was his opinion. He explained that he did feel like it would be appropriate to write something productive about this important conversation.

Mr. Hart explained that there are approximately eight different strategies for operating a citizen’s review, and he embraced one of them in the document presented so that the Common Council can get an idea of how something like this might work. He explained that he put in broad strokes how you would set something like this up. He explained that he proposes that the Police Department be in charge of investigations, and the Police Department proceed with rendering whatever discipline might flow from someone who might engage in misconduct. He explained that this does not mean that the citizen review committee has nothing, as upon the completion of the investigation they could have the opportunity to review the investigation and

all materials and if they are concerned with the outcome, then they would have the opportunity themselves to investigate. He explained that if they did do that, they could also recommend their opinion about the discipline and it would be up to the Police Chief to accept or reject this.

Mr. Hart explained that this is the idea that he has to offer. He explained that the Council should do this right and that they should be able to look at what opinions are. He explained that there is a lot of things that would go into the final law that would be adopted. Alderman Crawford asked if there is an active investigation, and there is open communication between the Police Chief and Citizen Review Board, if the investigation would be FOIL-able by the public or if it would only be shared between these two parties. He asked if there is any guidance there. Mr. Hart explained that FOIL does contain constraints about what type of information can be released. He explained that there are some dicey issues that you need to consider in this process and determine how open this is going to be.

Alderman Robinson explained that NYCOM's Municipal Matters handbook talks about FOILs and it was discussed that there were case studies both for and against what can and can't be disclosed for Police Officers. He explained that it depends on judges as cases have been decided both ways. He explained that FOILs can be requested, it is just a matter of who will allow and who will not and then fighting from there. Alderman Crawford explained that it doesn't happen super often but if a FOIL request comes in and someone wants to see how many investigations were conducted on an officer, he wonders if this is something the City has to comply with, even if the investigations are all unfounded. Mayor Aiello explained that the City Clerk receives the FOIL, then it is sent to himself and the Department Head with a copy to Mr. Hart. He explained that we have five days to let the person making the request know if we can provide the information, and then we have a reasonable amount of time to put the information together and give it to them. He explained that we do not have to create documents and we only have to provide documents that we already have. He explained that most FOIL requests are for information from Code Enforcement or for police reports.

Alderman Crawford asked what would happen if a personnel file was requested. Mayor Aiello explained that the request would be run by the City Attorney who would look into the request and see if the personnel file would have to be provided. He explained that currently we would have to provide personnel files for the Police Department but that it is different for the CSEA and Fire Department. He explained that we currently do not have to disclose these personnel files. Alderman Crawford explained that we could decline the FOIL request and the person making the request could elevate and appeal the decision. Mayor Aiello explained that if there is an active investigation, we do not have to provide the information until the investigation is resolved.

Alderman Robinson explained that the previous proposal from the Reform Committee was intended to have some type of wording that illustrated that there would be recommendations and that it would lead to some type of investigation. He explained that this leads back to the Diversity and Inclusion Committee and the Social Media Policy. He explained that if there was a hiring of attorneys to create that policy, then why didn't we do something like that for this policy. Mayor Aiello explained that we did do that and we have the opinions from Mr. Hart and Joe Braccio as a result. He explained that we did the same thing as we did with the Social Media Policy, as we sent off the policy for their review and they returned their opinions that are meant to protect the City. He explained that if a grievance is filed as a result of this policy, they are the ones that protect us.

Alderman Crawford explained that this outline memorandum is once scenario that Mr. Hart plays out, where the Review Board works alongside the Police Chief. Alderman Witte explained that at the end of the second paragraph, if the Chief disagrees with the Board's input, then the Chief has to put in writing why they disagree. She asked if it ends there or if they have to try have a discussion and come to a consensus. Alderman Crawford explained that the way it's written the Police Chief has the ultimate discretion, and he does not see an appeal process. Mr. Hart agreed.

Alderman Crawford explained that he can't help but feel that we are all over the place. He explained that the Council has not had an opportunity to read through Mr. Hart's memorandum, as well as the drafted policy and all other materials provided. He explained that at this time he is fine going through this together, and he doesn't know what the rest of the Council wants to do. He explained that the drafted policy is lengthy and he doesn't know if we want to continue going through this or work through the one page policy from the Police Union.

Alderman Gonzalez asked if there is any language in the policy for board member conduct and if the members are considered City Employees Mayor Aiello asked if a Zoning Board member would be held to the Social Media Policy, or a Planning Board Member. He asked if once the Council enacts the policy if it would be for all City employees and committees. Alderman Gonzalez explained that if there is an incident and a board member decides to launch a public smear campaign against the Police Chief because they do not agree with the Chief's decision, if there will be consequences. Mr. Hart explained that New York State considers this entity an administrative body which is a part of the City.

Alderman Crawford explained that anyone in any sort of official capacity or administrative position needs to be held to a standard. He explained that we cannot control the public of course, but this is something we need to think about. Alderman Robinson explained that this was discussed during the initial Reform Committee meetings that these board members need to have integrity. He explained that they are obligated to report to the community and

launching a smear campaign would be unethical. Alderman Gonzalez explained that this is just something that he could see going absolutely sideways and he is not sure the answer of what we would do there. Mayor Aiello noted that it was also discussed about signing a Confidentiality Agreement to be on the board. He noted as well that a few were totally against this on the Police Reform Committee.

Alderman Crawford explained that this is a good point. He explained that maybe as we look through and read the Social Media Policy, we explicitly state that any and all members of the municipal body whether appointed or elected must follow the policy. Alderman Robinson asked if he is suggesting that the group would not be able to talk to the community and the people they are representing about anything that wouldn't violate the investigation, and Alderman Crawford responded that there is a way to do it in a dignified way. He explained that transparency and open government is the way it is meant to be, but there is a right way and a wrong way. He explained that the confines to do it is not in the creation of this document, but in the creation of the Social Media Policy. He asked if this would alleviate concerns, and Alderman Gonzalez responded that it would.

Alderman Crawford explained that in the Police Union proposal, they suggested a City of Olean Police Advisory Committee. He asked about policies and procedures being kept confidential, and Chief Richardson explained for instance the pursuit policy. Alderman Crawford asked if only the Police Department knows about this, and Chief Richardson explained that this is correct. Alderman Robinson explained that when this proposal was received by the Police Reform Committee, it was shut down pretty quickly.

Alderman Gonzalez asked if the two year residency requirement is tied to the ward or just the City overall. Alderman Crawford explained that these are the things that we have to lay out correctly. He explained that what his personal beliefs are and what he asked Mr. Hart to issue a comment on is his concern over whether the Council as a body has the ability to appoint committee members. He explained that under the Charter, Olean has a strong mayor / weak council form of government. He explained that the Mayor makes appointments and the Council has the ability to authorize or disapprove the appointments. He asked if we have the ability to appoint, since this policy suggests that each Alderman appoints members of the committee, He explained that he does not think that it matters if you have lived in the ward or City for two years. Mayor Aiello explained that you only have to live in the City for one year to run for Alderman. Alderman Crawford recommended being consistent.

Mayor Aiello explained that the idea for the two year requirement was to have someone on the committee who was in the community for a while to understand the issues. Alderman Gonzalez explained that this comes back to the Aldermen. He explained that we assume that the Aldermen will appoint someone in good faith, as the Alderman puts their name on the

appointee. Alderman Robinson explained that the intent is that it doesn't matter what ward you have resided in, as long as you have resided in the City. Alderman Gonzalez explained that he is fine with that because we do not want to limit ourselves.

Alderman Crawford explained that sometimes we can overcomplicate things. He explained that personally, he would still like Mr. Hart's opinion. He explained that he understands what the Police Reform Committee's concerns were and what we were trying to achieve but he doesn't know if we should reinvent the wheel. He explained that the system is in place for appointments and confirmations. He explained that there are also no ward requirements for the Planning or Zoning Boards. He would be more apt to go along with a structure like that.

Mr. Hart explained that the Charter currently says that the Mayor has the power to appoint and the Common Council in some instances has the power to ratify or object. He explained that what we are probably talking about is a charter change to allow for Council appointment. He explained that it gets complicated and he is not sure that this is the correct answer. Alderman Gonzalez explained that if we are going to change the charter, he can think of a lot of other things he would rather change before changing this. Alderman Crawford explained that it is his understanding that there are certain things that the Council can do in terms of the charter and making changes through the legislative process. He explained that major changes would require a referendum, and he thinks that this is getting pretty close to making a major change. Mayor Aiello agreed and explained that the Council would be taking power from the Mayor. Mr. Hart explained that he would say that this would be a fundamental change.

Alderman Witte suggested having the Council provide names to the Mayor as a suggestion and then the Mayor can make the appointments. Alderman Crawford explained that the Council does ratify some appointments but that other boards, it's just up to the Mayor's discretion. Mayor Aiello explained that the Council ratifies Department Heads. Alderman Crawford asked if we could at last provide ratification for these members, and Mr. Hart responded that his instant opinion is that they could. Alderman Crawford explained that he can live with this.

Alderman Robinson explained that our Code states that the Mayor governs special committees and advisory committees, and the Mayor shall appoint members with the consent of the Common Council. Alderman Witte explained that what makes this different is that this is an oversight committee. Alderman Gonzalez explained that the beautification committee doesn't affect the lives of citizens like this committee would. Alderman Crawford explained that we don't all have to be on the same page, as this is part of the work session. He explained that he is fine with the Council making recommendations, with the Mayor appointing and the Common Council confirming. He asked if it is suitable that the member lives in the City for one year prior, but not ward specific.

Alderman Robinson explained that the draft policy was written so that members would be pulled from multiple areas of the City. He explained that if you have mostly members from Ward 1 that you have a stack of people that are not from the marginalized population. Alderman Crawford explained that he is fine if the Mayor appoints someone from every ward, but he thinks we need to shrink the total committee size. Alderman Panus explained that it was written that we strive to achieve balance within the wards of the City, but if no one wants to serve as a member in a certain ward then we still need to fill vacancies. Alderman Crawford explained that this was a concern last time and that we should try to meet the goal but that we understand that we may not be able to find someone in certain areas. Alderman Robinson explained that the whole purpose was to try to get someone from each ward, and he know it would be tough to get these people. He explained that this is for the initial setup.

Alderman Panus asked if after this the board fills members, and Alderman Witte explained that she can see tha becoming an issue. Alderman Gonzalez explained that they will need to go back to the Council and Mayor for the appointment and confirmation process. Alderman Crawford explained that we are creating a board that is a branch of the Council, of the elected body of the City. He explained that this should be as close to other boards as possible. He explained that it is challenging to find people to serve on boards and he would hate to see a ward go unfilled.

Alderman Gonzalez asked about a recall vote of 12 of the 16 members and if the committee would have the power to appoint and kick people off. Alderman Robinson explained that this is a way of checks and balances from within. He explained that if there is someone who needs to be removed from the board to maintain the integrity of the board, then this is the way to do so. Alderman Gonzalez explained that this is a double edged sword, though. Alderman Witte explained that if there is an issue, it should be taken to the Mayor and he should be told that the person needs to be replaced. Alderman Robinson explained that he didn't realize that the board is reporting to the Mayor, and Alderman Witte explained that we are finding that out.

Alderman Panus asked if the entire section needs to be changed, and Alderman Crawford explained that he feels that it needs to be completely rewritten, with seven or nine board members. Alderman Panus asked if there are alternates on other boards, and Alderman Crawford explained that there are not. Alderman Crawford suggested that the makeup consist of seven members, one for each ward that the Mayor appoints with Council confirmation of the appointment. He explained that the board members will have a required residency in the City of at least 12 months prior to appointment. He explained that if a vacancy arises, the Mayor will appoint for the remainder of the term, which is the same as the Zoning and Planning boards. The consensus was to move forward with these changes.

Alderman Crawford read the next part of the proposed legislation, and Alderman Robinson explained that this was a summarized version of the union version. Alderman Witte asked if

most of these things wouldn't already be covered by other policies of the Police Department, and explained that it seems that this Committee is taking the job of the Chief of Police. Alderman Crawford explained that he doesn't know if there needs to actually be a list of alleged types of misconduct in this legislation. Alderman Gonzalez continued that the proposed legislation states that a complaint doesn't need to be made to start an investigation. Alderman Barnard asked if this would be covered by the department's policies and procedures. Chief Richardson explained that a lot of what was just read is actually criminal, so this would not go to the Civilian Review Board but actually to the DA's office.

Alderman Robinson explained that this is called civilian oversight, so even if it is already in policy or law, if the civilian's don't have the ability to oversight without using the same exact procedures and outliers then this whole thing is for not. He explained that if you eliminate any line, you eliminate the whole process. HE explained that this whole thing came out of New York City word for word. Alderman Witte asked if they passed this legislation, and Alderman Robinson explained that they have a policy in with their charter that is larger than what we are trying to do. Chief Richardson asked if they are getting a lot of complaints that he is not aware of, and the consensus is that they are not.

Mr. Hart explained that he is concerned that when you have an entity that is going to investigate here and punish, there is a constitutional problem because it would be like kangaroo court. He explained that it makes it difficult or impossible to work through issues in a legal way. Alderman Robinson explained that in the Taylor and Civil Service Laws there is an issue implementing certain aspects of this. He explained that in other states, they have had some sort of police oversight since the 70's and 80's. He explained that each member of the Police Reform Committee has talked to people in their areas or groups, and these people from different areas came together with ideas of what they wanted to see in this. Mayor Aiello explained that by the time it came to write this, a lot of members had already resigned off the board.

Alderman Crawford explained that the initial findings came out of a large group, and they determined that Olean would benefit from a review board. He explained that he thinks that this is a loaded section for the Council to dig into. He explained that he is on board with having oversight and having the ability to have some form of communication. He explained that the Mayor gets a copy of a complaint and it goes to the Police Chief, and it still needs to be investigated internally. He explained that this seems to read that there are dual investigations going on. Alderman Robinson explained that the word investigate seems like the worst possible thing that could happen but we forget that there are worse things that could happen. He explained that if someone feels discriminated against, then they could come to the review board and the review board does their investigation and goes through the process. He

explained that in terms of investigation without a formal complaint, that would be to protect the people who do not want their identity out there just yet. He explained that if someone does not feel comfortable going forward with something, then they can initially start an investigation with a confidential person coming forward.

Alderman Witte asked if this person goes to the Mayor or committee and the Police Chief looks at the body camera footage, what happens if the footage shows a completely different story, if it would stop there. Alderman Robinson explained that it would as far as the police officer, but that the person could be penalized for filing a false report. Alderman Crawford asked if this means that the anonymous person is no longer anonymous if they need to be charged. Mayor Aiello explained that a lot of times it is a presumption of an individual and they are upset because they are receiving a ticket. He explained that the Council saw body cam footage of an individual who made a complaint against an officer which was shown by the footage to be a false claim. He explained that we are not going to go after the person filming the false report probably would not be charged unless they signed a document under penalty of perjury. Basically, we want to make the public feel like they can file a complaint. He explained that some people file complaint after complaint after complaint because they are always being arrested.

Mayor Aiello explained that this can work but we need to agree to use the term simplify. He explained that this does not need to be elaborate. We can put together a plan for a committee that is going to review things. He explained that it is also important to have a committee that understands confidentiality. He explained that especially if something does happen, the victim has rights, too. He explained that the Committee has the ability to review things, but also doing investigations can conflict. He explained that it all comes down to trust, He explained that he knows in reviewing past matters there have been things that have happened and we have done a good job investigating and handling things. He explained that there are screw ups now and then, but the whole idea is to have a functioning board that can review things and give an opinion. He explained that even in New York City the Police Commissioner has the final say on discipline. He explained that this board can make recommendations to the Police Chief and make comments so things can be looked at.

Alderman Crawford explained that for the next committee meeting he would like to discuss Section 2 and asked the Council to review this section prior to the meeting.

#### 4. Executive Session

A motion to enter into executive session to discuss personnel matters was made by Alderman Crawford, seconded by Alderman Witte. Voice vote, ayes all. Motion carried. Executive session began at approximately 8:00 p.m.



A motion to adjourn from executive session was made by Alderman Crawford, seconded by Alderman Panus. Voice vote, ayes all. Motion carried. Executive session adjourned at approximately 8:05 p.m.

5. Approval of Committee Reports

None

6. Adjournment

A motion to adjourn was made by Alderman Crawford, seconded by Alderman Gonzalez. Voice vote, ayes all. Motion carried. Meeting adjourned at approximately 8:05 p.m.