

City of San Antonio



Meeting Minutes City Council B Session

No in-person access to this meeting

Wednesday, June 10, 2020

2:00 PM

Municipal Plaza Building

ROLL CALL

Acting City Clerk Tina Flores took the Roll Call noting a quorum with the following Councilmembers present:

PRESENT: 11 - Mayor Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage, and Perry.

1. Briefing on the San Antonio Police Department current process for police-community relations, officer training, and legal framework for investigation and discipline of police conduct to provide City Council and the community a foundation to develop and evaluate potential reforms. [Erik Walsh, City Manager; Andy Segovia, City Attorney, William McManus, Chief of Police]

First Assistant City Attorney Elizabeth Provencio stated that the City worked within the legal framework that formed the employee relationship with Police Officers to include the Texas Local Government Code Chapter 143, which was the Public Safety Civil Service and the Texas Local Government Code Chapter 174 which was the Collective Bargaining Statute. Ms. Provencio noted that Texas Government Code Chapter 143: 1) Provided Civil Service Protections to Fire and Police Employees; 2) Set requirements for hiring, promotion, terms of employment, discipline, and termination; 3) May be repealed by election upon petition.

Ms. Provencio reported that Texas Local Government Code Chapter 174 was adopted in 1974 by San Antonio voters and: 1) Enabled Police Officers and Firefighters to Collectively Bargain; and 2) May be repealed by election upon petition. She noted that the City of San Antonio had Collectively Bargained with the San Antonio Police Officer's Association (SAPOA) since 1974.

Ms. Provencio stated that the current Collective Bargaining Agreement (CBA) was negotiated between

SAPOA and the City and would expire in September 2021. She noted that the terms of Chapter 143 may be altered by agreement and if the parties did not agree, negotiations may then be subject to mediation and/or arbitration.

City Manager Erik Walsh reviewed the following discipline priorities of the City in the last CBA:

- Prior Officer misconduct
- Eliminate 189-day limitation
- Remove requirement to reduce short suspensions to reprimands
- Internal Affairs procedures and investigation of discipline cases
- Eliminate Officer forfeiture of leave time to satisfy suspension
- Officers charged with crimes
- Back pay for disciplined and indicted Officers

City Manager Walsh reported that under the CBA, contract negotiations were required to begin February 2021.

Police Chief William McManus reported that the disciplinary process was regulated by the Texas Local Government Code Chapter 143 and the CBA. He noted that the discipline process would begin with complaints from the community and the San Antonio Police Department (SAPD) and formal complaints were investigated by Internal Affairs.

Chief McManus explained that formal complaints would go through an Internal Affairs investigation, the Complaint & Administrative Review Board (CARB), the Chief of Police. He noted that once a decision was made, the Officer would accept or repeal the decision. He added that line complaints would go through the Police Officer's supervisor with review by a Captain, the Officer would be disciplined and accept the complaint or, would be referred to Internal Affairs, and ultimately to the CARB. He added that discipline must take place within 180 days of the incident unless the Officer was indicted.

Chief McManus stated that the CBA provided the following for Police Officers:

- 48-hour notice prior to contact by Internal Affairs
- Attorney, Supervisor, or Union Representative during questioning
- Ability to view all evidence prior to questioning
- Meeting with the Police Chief to discuss contemplated discipline
- Appealing Police Chief's decision to an Arbitrator

Chief McManus reported that the Internal Affairs Unit was comprised of one Captain, one Lieutenant, twelve Sergeants, and two civilian support personnel who would receive and investigate complaints against Police Officers, collect facts, and conduct interviews. He indicated that once the investigation was completed, the case would be forwarded to the CARB.

Chief McManus reviewed the formal investigations and reviews conducted by the Internal Affairs Unit from 2010 through 2019, line complaints received and reviewed from 2010 through 2019, and use of

force complaints received and investigated from 2010 through 2019. He noted that a line complaint could be made regarding rudeness or against someone who showed up late repeatedly. He noted that the increase in line complaints and formal investigations in 2015 were the result of the Body-Worn Camera Program.

Chief McManus reported that there had been a significant reduction in the use of force and there were eight complaints and investigations regarding use of force to date.

Chief McManus stated that the CARB was comprised of seven Police Officers and seven Civilians. He noted that the CARB was authorized by the CBA and examined investigations completed by the Internal Affairs Unit on complaints against Police Officers. He reviewed the gender and race/ethnicity for the CARB.

Chief McManus explained that after he received the CARB's recommendation he would issue a Contemplated Notice of Discipline in writing which would set forth the alleged rule violation and the facts supporting the violation to the disciplined Officer. He added that there were two exceptions to the two-year limit on prior misconduct: 1) 10-year limit was established for drug and alcohol-related misconduct; and 2) Five-year limit was established for acts of intentional violence. He stated that when the Police Chief served the final discipline, the Police Officer may appeal the discipline in writing to Human Resources within 15 days.

Ms. Provencio explained that the Police Officer could appeal the discipline by: 1) Appearing before the Public Safety Civil Service Commission; or 2) Appearing before an Arbitrator. She noted that if the Police Officer wished to appear before an Arbitrator, the Arbitrator would be selected by SAPOA and the City from a list of seven AAA Arbitrators.

Ms. Provencio indicated that the CBA allowed for a limited discovery process and the City had the burden of proof. She noted that Police Officers often utilized comparators (discipline issued to other Officers) to support their case. She reported that the CBA allowed the Arbitrator to impose discipline for any amount of time and the City's appeal of the Arbitrator's decision were strictly limited.

Chief McManus explained that Officers deemed unsuitable to return to service in the field were assigned to administrative positions with little to no interaction with the public. He presented the "8 Can't Wait" police recommendations from the Campaign Zero organization. He added that in 2014, SAPD banned chokeholds and strangleholds and was the only city in Texas to have done so. He explained that there was an exception when a chokehold or stranglehold would be allowed which was only in a situation where deadly force would be permissible.

Chief McManus reported that San Antonio had met the requirements of the Campaign Zero Organization, but that there were four policies that the City did not get credit for that the "8 Can't Wait" Policy recommended:

1. Exhaust all alternatives before shooting
2. Require all use of force be reported
3. Ban shooting at moving vehicles
4. Require warning before shooting

Chief McManus stated that deadly force was authorized to protect an Officer or another person from what was reasonably believed to be an immediate threat of death or serious bodily injury. He noted that all use of force was reported in the Officer's departmental report, and an additional report would be required if the following occurred: 1) Greater than empty hand control; 2) Injury which required medical treatment; 3) Causes death to an individual; 4) Discharging a firearm to an individual; 5) Use of an immediate weapon; and 6) When a police dog bit an individual.

Chief McManus reported that SAPD prohibited Officers from shooting at a moving vehicle except as the ultimate measure of self-defense or defense of another. He noted that SAPD's De-Escalation Policy required Officers to de-escalate tense situations to reduce the need for force through:

1. Warnings
2. Advisements
3. Verbal persuasion
4. Tactics

Chief McManus indicated that SAPD was accountable for all official acts of its Officers, held Officers to a high standard of conduct and discipline, and had strived to achieve trust and confidence with San Antonio Residents. He added that there needed to be consequences for misconduct and that the policies in place needed to be certain and final.

Chief McManus stated that Cadet training and In-Service Officer training included cultural diversity, implicit bias, de-escalation, crisis intervention, use of force, tactics, general manual, and rules and regulations.

Chief McManus stated that Officer wellness and support was provided by SAPD and was recognized as a national model by the U.S. Department of Justice. He reported that the 21st Century Policing Report was issued in 2015 by President Obama's administration. He noted that following the release of the report he created six subcommittees to: 1) Build trust and legitimacy; 2) Provide policy and oversight; 3) Provide technology and social media; 4) Provide community policing and crime reduction; 5) Provide training and education; and 6) Provide for Officer wellness and safety.

Chief McManus stated that the subcommittees were created to identify potential opportunities to incorporate the findings of the report into the strategies and practices of SAPD. He indicated that the 21st Century Policing Initiative met or exceeded 73 of 76 recommendations within the Presidential Commission on Advancing the 21st Century Policing Report and that San Antonio was the largest of 15 police agencies selected to participate in the initiative.

Chief McManus reported that Public Safety Roundtables were held from Summer through Fall of 2019. He reported that the Community Engagement Citizen Engagement Group met quarterly to discuss public safety issues, collaborate on various outreach projects, and solicit input from community stakeholders. He noted that the Community Engagement Team proactively established contact with individuals in high crime areas in an effort to facilitate delivery of support services and to prevent criminal activity through violence intervention, victim advocacy, and community engagement.

Chief McManus stated that the Success Through Respect Program began in 2016 and was an interactive and conversational program which allowed for a safe space for Officers to listen to students in school who could share concerns and issues with. He highlighted the Handle with Care Program, the Early Intervention Program, and the Neighborhood Crime Prevention Program.

Councilmember Cabello Havrda stated that the first three Public Safety Committee Meetings would be held in one week and would be listening sessions. She noted that there would be two virtual sessions and one in-person session. She added that the meetings would be held at varying times of the day and week to provide a forum for individuals to speak.

Chief McManus reported that the next steps included:

- FY 2021 SAPD Equity and Gender Diversity Training
- Coordination and final review of outstanding “8 Can’t Wait” Policies
- Maintained Officer accountability
- Continuous benchmarking of policies with best practices
- Establish CBA and State legislative priorities

City Manager Walsh proposed that staff bring back some potential actions after the Public Safety Listening Sessions.

Mayor Nirenberg stated that demonstrations had been taking place across San Antonio and were a call to action. He noted that the solution for poverty was not more policing. He asked what part of the Police Department Budget was locked in the current CBA. City Manager Walsh replied that approximately 80% of the Police Department Budget was tied directly to the requirements in the CBA. Mayor Nirenberg asked what items within the police budget were tied at the Council’s discretion from an annual budget perspective. City Manager Walsh reported that items at the City Council’s discretion included 9-1-1 dispatch operations and civilian personnel of the Police Department.

Mayor Nirenberg stated that he would like the City to fulfill all of the “8 Can’t Wait” Policies. He requested information on the Use of Force Continuum. Chief McManus reported that the Use of Force Continuum began with the presence of an Officer, verbal commands, empty hand control, an intermediate weapon, and escalated to deadly force if necessary.

Councilmember Cabello Havrda asked of the barriers to resolve issues in the CBA. City Manager Walsh stated that the current CBA was settled by court-ordered mediation. He noted that health benefits and disciplinary issues were the two main priorities of the City.

Councilmember Treviño asked if the City was planning to renew grants and asked of the timing for renewal of the grants. He requested an itemized list of all grant purchases and asked of the fiscal impact of non-renewal of grants. He asked if Federal grants supplemented the SAPD Budget, and if so, could Federal grants fund equipment and training and could those funds be reallocated to other departments which compliment Public Safety such as housing and mental health.

Councilmember Treviño asked what the terms were for the Police and Fire Civil Service Commission and of the process for selecting members. He asked of the age requirement for the Commission and if

the City Council could advocate for more members on the Commission. He asked for data on decisions made by the Commission, requested that the answers to his questions be made in writing, and that staff add a future item for B Session to discuss the Free Speech Ordinance.

Mayor Nirenberg asked that staff and Chief McManus send the responses to Councilmember Treviño as well as the City Council and the Public Safety Committee.

Councilmember Andrews-Sullivan stated that there was a systemic problem of injustice and adopting the Resolution was the first step in ensuring that public engagement in police processes were brought to the forefront. She asked if a petition could be brought forth to change the processes for Chapters 143 and 174 of the Texas Local Government Code. City Attorney Andy Segovia replied that Chapter 143 could be repealed by petition with the signatures of 10% of qualified voters. He noted that the City Clerk would verify the signatures and if there were enough verified signatures, the item would be placed on the ballot.

City Attorney Segovia explained that for Chapter 174, the City Council must order a repeal election if a petition was received with signatures of qualified voters of either: 1) 20,000; or 2) 5% of the number of qualified voters who voted in the City in the preceding General Election for State and County Officers. He stated that the previous General Election was held in November 2018 and 386,729 registered voters in the City voted so 5% would be 19,337. He added that if the signatures were verified by the City Clerk, the item could be placed on the ballot.

Councilmember Viagran spoke in support of instituting a Zero Tolerance Policy for racism, discrimination, and domestic abuse. She asked that current and future recruits be vetted and polygraphed for racist ideology and discrimination. She asked how much of the funds last year were in the form of grants and asked for the funding amounts for each outreach program.

Chief McManus stated that the killing of George Floyd presented an opportunity to review police policies and revise them to better benefit the community.

Mayor Nirenberg asked if an order for crowd dispersal would come from the Police Chief. Chief McManus replied that it would.

Councilmember Rocha Garcia stated that there should be a protocol in place to ensure that bad behavior was not accepted from Police Officers. She asked of the Community Relations Committee appointed by Mayor Ivy Taylor. City Manager Walsh replied that members became less involved after a period of time.

Councilmember Gonzales asked of the listening session process. Councilmember Cabello Havrda stated that the first three Public Safety Council Committee meetings would be held in one week. Councilmember Gonzales asked if the Police Chief had the authority to implement penalties for misconduct when Officers were not on duty. Chief McManus replied that he did.

Councilmember Sandoval requested that the Police Chief or staff provide a diagram of the different units and public engagement opportunities that were mentioned. She asked of the membership of the Boards and Committees mentioned and how the public could become involved in those.

Councilmember Pelaez reported that San Antonio was one of the cities with the highest rates of poverty and economic segregation. He noted that such cities saw higher rates of police violence against black men and women. He asked if 67.5% of fired Officers who appealed through arbitration were returned to work by the arbitrator. Chief McManus replied that they were. Councilmember Pelaez stated that every San Antonio citizen had a legitimate reason to be confused and furious about this. He added that he would not support any effort which resulted in fewer Police Officers on the streets.

Councilmember Courage stated that the City needed to do more to improve its police force. He asked what the format was for psychological testing, how many fail the psychological exam, and were those who failed given multiple chances to pass. He asked of the format utilized for Implicit Bias Training, and how often the training was given. He asked of the number of Police Officers who were on administrative duty, and what kind of military style surplus vehicles, hardware, or arms did SAPD have. He asked if a San Antonio Fear Free Environment (SAFFE) Officer position was voluntary. Chief McManus replied that the SAFFE positions must be applied for and the selection would be made based upon an interview. Councilmember Courage suggested that all Police Officers rotate through a SAFFE Officer position.

Councilmember Perry stated that he supported SAPD and would not support taking funds from them. He noted that the SAFFE Unit was successful and had continually improved. He asked if staff had met informally with SAPOA. City Manager Walsh replied that they had not but would begin meeting in February 2021. He stated that it was time to discuss priorities and guiding principles such as discipline and arbitration.

Councilmember Viagran requested data for the past five years on how many cases submitted for arbitration ended with the Police Officer being reinstated. She requested the amount of funding utilized for back pay in these cases. She spoke in support of a police substation in Council District 3 comprised of law enforcement and other services.

Councilmember Rocha Garcia stated that she would like to see a focus on restorative justice and mental health. She requested a breakdown of the formal investigations and asked if exemptions could be requested. Ms. Provencio replied that the CBA was the method by which exemptions were made.

Councilmember Gonzales asked for the amount of funds received from grants which were not law enforcement-related. Ms. Villagómez replied that SAPD received a total of \$5.2 million in grants regarding drug trafficking, auto crimes, human trafficking, and Community Oriented Policing Services (COPS).

Councilmember Sandoval stated that she supported reinvesting funds from the police budget in organizations which could perform some of the work which Officers do.

Councilmember Andrews-Sullivan asked how many of the Officers that were terminated had been employed by other police departments. City Attorney Andy Segovia replied that he was not aware of a State database which kept that information.

Chief McManus stated that police departments could not resolve the systemic social and economic

issues in cities across the country. He noted that he agreed with the issues being protested against. He indicated that any policy which could be improved, would be improved quickly.

City Manager Walsh stated that requests for information would be compiled and shared with City Council.

Mayor Nirenberg stated that some changes could be made immediately but an agenda must be developed at multiple levels of authority.

ADJOURNMENT

There being no further discussion, Mayor Nirenberg adjourned the meeting at 5:27 pm.

APPROVED

RON NIRENBERG
MAYOR

Attest:

TINA J. FLORES
Acting City Clerk