

**TUMWATER PUBLIC HEALTH AND SAFETY COMMITTEE
MINUTES OF VIRTUAL MEETING
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CONVENE: 8:00 a.m.

PRESENT: Chair Leatta Dahlhoff and Councilmembers Michael Althausen and Angela Jefferson.

Staff: City Administrator John Doan, City Attorney Karen Kirkpatrick, Police Chief Jon Weiks, Police Commander Jay Mason, Fire Chief Brian Hurley, Fire Captain Shawn Crimmins, and Police Administration Supervisor Laura Wohl.

Others: Mayor Pete Kmet.

CHANGES TO AGENDA: There were no changes to the agenda.

**APPROVAL OF
MINUTES: JUNE 8,
2021 AND AUGUST
10, 2021:**

VOTE: A voice vote by the committee unanimously approved the minutes of June 8, 2021 and August 10, 2021 as published.

POLICE REFORM LEGISLATION: Police Chief Weiks reported the ongoing briefing is on recent police reform legislation. The previous briefing covered Senate Bill 5476 on mental health, House Bill 1054 on tactics and equipment, and House Bill 1031 on use of force. The briefing will provide information on the duty to intervene (Senate Bill 5066), state oversight and accountability legislation (Senate Bill 5051), and address questions on the possible impacts to the Tumwater Fire Department.

Police Chief Weiks invited questions.

Councilmember Althausen asked for any information with respect to any recent changes to policies and/or implementation actions since the last meeting.

Chair Dahlhoff said she considered the role of the committee for supporting law enforcement with the changes moving forward, as well as communicating to the community the amount of work completed by the Police Department in response to the legislation. She asked whether the department is tracking the timelines and related efforts and if the department has considered ways to communicate information to the community. Police Chief Weiks said he plans to address those questions during the briefing.

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Police Chief Weeks reported Senate Bill 5066 covers the duty to intervene. The legislation has three components of: (1) duty to intervene if another officer uses excessive force, (2) duty to provide first aid to anyone injured as a result of use of force, and (3) duty to report excessive force to a supervisor. It is important to note that the three components are not new, as the Tumwater Police Department has always had a duty to intervene and a duty to report policies since 2011. Most agencies across the state have similar policies. The duty to provide first aid has been required since 1988. However, what has changed with the legislation is important because the duty to intervene is based on department policies of the witnessing officer, which represents a change.

During a response to a mutual aid incident, the department must consider its rules of engagement and whether the responding departments have different use of force policies. As with any written policy, the implications of implementing practices are much more difficult. In conjunction with recent legislation, some undefined exemptions to the rule were inadvertently created. The duty to intervene is defined except for *de minimis or technical in nature* situations. The legislation does not provide a definition, which has created issues for law enforcement in attempting to define those two situations and how they would be applied. Fueling the issue further is the push to decertify officers when the duty to intervene has been employed.

One example of a change in policy is sending more than one officer to a call because of the possibility for use of force. If an officer or officers must use force, both officers should be on scene, as both would have knowledge of the situation and whether it would be necessary to apply force. Prior practices typically involved an officer responding to a scene and if assistance was needed, a second officer responded. However, the second officer would not have the benefit of fully understanding the situation, which now creates problems under the new legislation. Most use of force incidents are instantaneous and are not preplanned. When incidents require use of force, a second arriving officer assisting another officer is not aware of the entire situation and might employ use of force, which the initial officer might believe is unnecessary or vice versa. As a result of those types of situations, the police department has instigated a deliberate response to most calls resulting in fewer officers available to handle other calls.

Police Chief Weeks responded to Councilmember Althaus's comments regarding the new standards on the duty to intervene and the connection to decertification. The new standards do not change how the department prioritizes calls; however, it is a factor that is considered. Call prioritization is based on the type of call. Today, for those calls

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that might involve the need for police action, the response by both officers is coordinated to ensure they arrive on scene simultaneously.

Councilmember Althausen asked whether the new standards drive the linkage between the standards and duty to intervene and the connection between decertification. Police Chief Weiks affirmed that interpretation. Councilmember Althausen added that the concern is that if the duty to intervene is not followed under the new standards it could serve as a prerequisite for decertification. Essentially, the new standards requires another “set of eyes” analyzing the problem in order to make a joint decision on whether force is necessary.

Police Commander Mason cited an example to provide some clarity. The goal is to have multiple officers for mutual assistance and to ensure all officers have the same knowledge base surrounding the incident. One of the challenges is responding to an incident involving the subject and another officer who initially responded. Upon approach to the scene, the second officer witnesses the first officer delivering a punch to the subject creating a situation whereas the second officer does not have the information necessary to ascertain whether the punch was necessary. That situation creates another cognitive element officers must consider. It is important to provide all the tools necessary for officers to be successful. One tool is slowing the process and having officers respond simultaneously to ensure they both have the same degree of knowledge when responding to an incident. Under the new scenario, resource management for the department is much different.

Councilmember Althausen remarked that the approach appears to be positive unless the outfall of the new approach includes more staff time, more overtime, or less response to other calls for service. Police Commander Mason said the department has strived for leanness and efficiency throughout the delivery of service. With the recent changes, that model has been challenged. The issue is whether the department’s budget should be increased to ensure sufficient number of officers for response.

Councilmember Jefferson said it appears police response is now a team approach rather than individually. She asked whether the City is at risk of lawsuits if something should happen where only one officer is on scene and has not reacted because of the lack of a second or third officer. Police Chief Weiks advised that the scenario is always a possibility; however, officers would engage when necessary as officers have a duty to protect. He noted that the recent action to add a sixth sergeant is in response for the need for supervision because supervisors are now monitoring calls much closer and providing initial direction.

Chair Dahlhoff asked about those situations where other agencies have

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not implemented policies in response to the new standards and Tumwater police officers respond to a mutual aid incident. Police Chief Weiks explained that local police departments are in constant contact. An example of response under the new standards involved the Tumwater Police Department recently providing assistance during an Olympia downtown demonstration by covering the westside of Olympia with Olympia Police Department responding to the downtown demonstration. Mixing of departments is not occurring to the extent possible. However, if assaults were occurring, both departments would respond. The goal in response is to reduce the risk for all officers and departments while ensuring citizens and property are protected.

City Attorney Kirkpatrick added that the region's police advisers, city attorneys, and the Thurston County Prosecutor's Office are working closely to circulate all policies between the agencies. The policies are not identical but are operationally equivalent. The group continues to meet weekly on the changes and as new information becomes available, the policies are adjusted. All agencies in the region are working together to ensure all policies are in coordination operationally. Additionally, all jurisdictions are at risk of exposure because of police response. However, actual liability for the City occurs when police response is not in compliance with statutes.

Police Chief Weiks reviewed changes to duty to provide first aid. One of the concerns by officers is the inclusion of the provision stipulating "at the earliest safe opportunity." The statute includes no definition to define "at the earliest safe opportunity," as it could have many different meanings to different people. The inclusion of ambiguous terms create issues for the department. In response, the department provided officers with mass casualty bags and continues to work closely with the Fire Department to provide care.

Other changes pertain to reporting. The new law requires the department to provide notice to the Criminal Justice Training Center (CJTC) of any disciplinary decisions resulting from an officer's failure to intervene or failure to report. By December 1, 2021, the CJTC in partnership with the Washington Sheriffs and Police Chiefs Association and other organizations representing officers are required to develop a model policy for distribution throughout the state to law enforcement agencies. Following the release of the model policy, the department with assistance from the region's group will determine if any changes are required to existing policies. By January 31, 2022, all law enforcement agencies must have an adopted policy. For the Tumwater Police Department, compliance with the law will require only an update. By December 31, 2023, all law enforcement officers completing the basic law enforcement academy must receive training on the duty to intervene.

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When provisions on the duty to intervene were adopted in state law, much attention was generated and command staff at Tumwater Police Department began an in-depth review of the ongoing discussions. One subject of importance was the discussion surrounding culture and training. As previously shared with the committee about the extent of training provided by the department, command staff determined that the training in response to the new provisions in state law has been lacking on intervention by officers. The department trains to intervene in most types of scenarios but never in the context of intervention between officers. Consequently, Commander Mason researched available training for officer-to-officer intervention. In late 2020, the department presented information to the Council on Georgetown University's Active Bystandership for Law Enforcement (ABLE) project that prepares officers to successfully intervene to prevent harm and to create a new law enforcement culture that supports peer intervention. That training is now offered at the basic law enforcement academy. The Council approved a budget amendment to include the training for the department. ABLE training is scheduled for later in the year and into next year. The department will offer refresher courses every year.

Councilmember Althaus asked about incidences similar to a recent incident in the City of Kent whereby the policy prevented police response to calls involving self-harm or attempted suicide if the individual is alone in a house and not presenting a threat to anyone else. An individual in Kent acted on the threat and committed suicide. He asked about the department's policy in terms of response to those types of incidents. Police Chief Weiks explained that those situations are very difficult and most agencies experiencing issues within the community have typically released blanket statements on the type of incidents that would or would not generate a police response. The Tumwater Police Department has communicated to the community the importance of calling the police department regardless of the type of incident. What has changed within the department is how the department monitors those calls and determines the appropriate level of response. Supervisors triage all calls. Any call not generating a police response includes an automatic follow-up with the caller advising them of the reason for no response. During the call, the department offers other resources to address the issue. It is difficult to answer the question directly because of numerous factors existing with each call. Each situation can change with a moment's notice. Supervisors monitor and make decisions and attempt to provide a resource if no police response occurs. This is one aspect of the new law that is concerning to officers as officers want to serve and help people; however, because of restrictions on use of force situations involving suicidal individuals, it is now difficult for police officers to respond as many situations require use of force to restrain the individual for their own safety. Those are

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factors the department must now consider where previously, those factors were not considered, and the department initiated an automatic response.

Police Chief Weiks emphasized the department has a good culture and the changes represent ways of pursuing better outcomes.

Police Chief Weiks cited SB 5051 on state oversight and accountability legislation. The legislation affects the department more than the other legislation affecting both officers and other City departments. The in-depth legislation has many elements.

The legislation changes the makeup of the CJTC currently comprised of 11 members representing interests identified by state law. Recent legislation expands the Commission membership to 21 members by adding members external to law enforcement. The Governor is required to appoint members, which is creating problems for CJTC to complete some tasks, as the change has become effective requiring the attendance of at least 10 members to attain a meeting quorum because of the membership change enacted by the legislation. Last month, the Commission scheduled a meeting but was unable to attain a meeting quorum. Eventually, the Governor will appoint members to include some community members.

The legislation also addresses police officer certification and includes requirements for pre-hiring screenings, provides overview on personnel files and access, and speaks to restricting nondisclosure agreements. This section of the legislation has not affected the department because the department's current background process is extremely thorough and difficult with the goal to hire the best applicant. One new change requires the department to contact every single court a lateral police officer applicant may have engaged with during previous employment with another agency. The contact is to ascertain possible Brady violations, such as any past actions that would have affected the applicant's character as a witness. The background effort must be documented. Previously, the department's practice has always included solicitation of an applicant's prior police department records. The nondisclosure agreement provision prohibits the use of nondisclosure agreements, which may affect decertification and the termination of an employee. In many departments, the practice has been allowing an employee to resign in lieu of termination with a nondisclosure agreement prohibiting the release of any information by either party. The new law expressly prohibits the use of any form of nondisclosure agreement. All information is subject to reporting under the new law.

Officer decertification previously occurred at the request of the department or by the CJTC. The legislation is aimed at not relying on

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departments to address accountability. Instead, the state will provide the oversight by establishing circumstances where officers must be decertified, when decertification can be denied, when decertification can be revoked or suspended, and specific actions required by CJTC. The legislation also addresses probation and remedial training and includes requirements for CJTC. Should the CJTC decertify an officer, the department, as an employment agency cannot terminate the officer based solely on the decertification. However, the likelihood that an officer would be decertified without violating a department policy is unlikely, but it could happen. The new law is very clear that the department would be unable to terminate the employee who has been decertified.

The new legislation includes information on how an officer can be recertified and whether it is possible to receive recertification. A mandatory denial or revocation prevents an officer from ever serving as a police officer in the state. In those instances, CJTC cannot overturn the decertification.

The new legislation requires mandatory notification to CJTC within 15 days of any employment separation action to include reasons for resignation or retirement and the findings of any internal or external investigation. Mandatory reporting to the CJTC is required within 15 days of learning of any occurrence of any death or serious injury caused by the use of force. The requirement could result in multiple investigations resulting in multiple outcomes creating different findings.

Mandatory reporting to CJTC is required within 15 days of learning of an officer being charged with a crime. Departments must have policies that require officers to report any criminal charges, convictions, pleas, or depositions to the agency. The department's current policy has been in place prior to the legislation and does not impact the department other than reporting within 15 days.

Police Chief Weiks added that the CJTC received no additional funding or staffing resources to respond to the new legislation. The CJTC's ability to handle the volume of work is not possible at this time. Based on communications with the CJTC, the department will require the department to continue current practices with exception of submitting required reporting. It is likely additional funding will be required for the CJTC to assume the additional responsibilities.

Mayor Kmet referred to the department's database that tracks the use of force incidents. He asked whether the department plans to maintain the database regardless of new state requirements. Police Chief Weiks affirmed the department's intent to continue maintaining the database as it provides important information.

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Chair Dahlhoff noted that the department's use of force numbers were higher because of the City's higher threshold. She asked whether the legislation would have any impact on reporting. Police Chief advised that officers do not employ more force, but often use force quicker and at much lower levels. Historically, the department resolves issues quicker with less force. The legislation will change the department's outcomes significantly because the ability of using force has been removed. The department is already experiencing drastic reductions in the use of force but injuries may be increasing to individuals because law enforcement is not responding, especially when it involves civil issues or mental health situations.

Councilmember Althaus added that the department also defines force differently than other jurisdictions. For example, an officer placing their hands on their holster is defined as a low level use of force whereas other jurisdictions might not report those types of incidents. The department defines use of force at a much lower level so that the data triggers the tracking of those incidents. He asked whether the state is delegating the definition of use of force to local departments. Police Chief Weiks explained that the lower level of use of force defined by the department is used not only to track data but it provides the department with a higher level of review. Based on recent changes in state law, the department is constantly reviewing all changes, which may result in different ways of reporting. As the state continues to provide definitions, the department will continue to adjust with periodic updates to the committee.

Councilmember Althaus asked whether the CJTC has been tasked to define standards for use of force or whether legislation will need to codify the proposed standards. Police Chief Weiks said at this time, many discussions are underway on use of force standards and it likely would require action by the Legislature with the CJTC, Attorney General's Office, or other law enforcement associations to engage in collaborative efforts to develop use of force standards.

Police Chief Weiks reported other changes pertain to records retention requirements for officer personnel files. The legislation requires the CJTC to retain permanent records and it provides CJTC with the ability to fine departments in cities up to \$10,000 for the failure to report timely. Citizen complaints on departments can bypass the department and go directly to the CJTC to investigate complaints. The legislation also speaks to hearings, proceedings, decertifications, social networking, and provides the CJTC with the sole authority to provide basic law enforcement training in the state. A lawsuit has been filed against the legislation.

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Police Chief referred to no blanket policies in the department as the department relies on the community to call when needed. The department will monitor all calls and recontact callers if no police response is forthcoming. The department does not plan to release a blanket statement on police response. It is important to continue communicating with the community. With the addition of a management analyst, the department will be able to provide the community with more information.

Police Chief referred to the updated policies provided earlier to the committee. He encouraged members to contact him with any questions.

Fire Chief Hurley briefed members on some Fire Department basic policy and directives and recent data collected. The Fire Department is developing a responder safety directive comprised of two elements involving medical response from the Thurston County Medical Program Director for guidelines on patient treatment and care and the department's directives for staff operations. The fire department and the police department have a good working relationship with the fire department working with the police department through the issues caused by the new legislation. Calls that have historically included law enforcement response are no longer an automatic today. Many of those calls involve suicide threats, drug overdose, or behavioral emergency events. The fire department developed some practices and policies for fire department response with a goal for fire responders to undertake an assessment as to whether the situation is safe for response. The department can obtain information in a number of ways through 911 dispatch on information shared by the caller or any previous incidents that might have occurred at the same address. Some addresses could be marked because of safety concerns. The department plans to reach out to TCOMM to ascertain any concerns associated with a particular address. The department may also contact the reporting party to obtain more information.

As outlined by the Police Chief, the importance of having sergeants and supervisors is a practice the fire department is adopting by having fire department supervisors contact police supervisors to discuss situations that may or may not require a response. The assessment will help the department make determinations about whether it is safe to respond to a scene. In terms of suicide calls, the fire department may or may not be able to respond depending on the circumstances. In some circumstances the department may not respond but will attempt to provide some form of assistance. The department is working with TCOMM to identify potential unsafe incidents. In cases of no response, TCOMM will close the call based on safety reasons.

Fire Captain Crimmins said the legislation was effective in July and the

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police department has met with the fire department to outline the police department's limitations. Since the first of August, safety is a factor that will affect response countywide. The Tumwater Fire Department has not experienced any no response calls. In Thurston County, it has occurred eight times when no response was provided for various reasons. For responses that normally involve law enforcement, the department has received seven calls that would have involved the fire department.

Fire Chief Hurley pointed out that the fire department is in the process of evaluating ongoing assessments as calls are reviewed, which is both stressful and uncomfortable for staff when law enforcement historically responded as well. Any incidents where personnel feel threatened, the police will respond.

The committee agreed to pursue follow-up questions with the police department off-line rather than including updates on policing as an ongoing agenda item each month.

Councilmember Althaus spoke to potential gaps in response to incidents involving mental health issues and that perhaps an additional set of programs or services might be necessary to address a population that has needs that might be unmet.

Mayor Kmet reported the feedback from Medic One is that the programs lack the resources for expanding the scope of existing services and would require additional funding. The City has one-time funding for response to policing reform laws of approximately \$100,000. One item of discussion with the Council is whether the City should consider contracting for behavioral services support.

Police Chief Weiks said the issue is being discussed at the state level as police reform eliminates tools from police departments to respond to those situations without providing tools for mental health resources to fill the gaps.

Mayor Kmet shared that he, Police Chief Weiks, and other local mayors are meeting with several legislators to discuss some of the concerns generated by new police laws and potential solutions.

ADJOURNMENT: **With there being no further business, Chair Dahlhoff adjourned the meeting at 9:07 a.m.**