



MEMORANDUM

TO: Mayor and City Councilmembers
Stephen Postema, City Attorney

FROM: Howard S. Lazarus, City Administrator

DATE: February 27, 2020

SUBJECT: Recommendations - Investigation of the Actions of Police Chief Michael Cox

REFERENCES: 1. Attorney-Client Privilege Memorandum from Megan P. Norris, Miller Canfield, dated February 20, 2020, RE: Police Department Investigation
2. Letter from Michael Cox, Chief of Police, City of Ann Arbor, February 26, 2020

I am writing to provide my recommendations in light of the findings of the Investigation of the Actions of Police Chief Michael Cox memorandum (hereafter, the Investigator's Report) and the response of Chief Michael Cox (hereafter, Chief Cox's response). In addition to the correspondence cited above, the following references are applicable to my recommendations:

City Charter

The City Charter contains the following applicable sections:

- Section 5.1 states, "The City Administrator shall be the administrative agent of the Council,".
- Section 5.1.(b)(1) states, "It shall be the duty of the City Administrator to: Direct, supervise, and coordinate the work of the Police Department,".
- Section 5.8.(a) states, "The Police Department shall be in the immediate charge of the Chief of Police, who shall be responsible directly to the City Administrator."
- Section 12.1.(b) establishes the Police Chief as an appointive officer of the City, who is appointed by the City Council with the advice of the City Administrator (Section 12.1.(b)).
- Section 12.12.(c) provides, "The City Administrator may, for good cause, suspend any officer whose appointment by the City Council is required to be made upon the recommendation of the City Administrator. Within twenty-four hours after any such suspension the City Administrator shall file with

the Clerk a statement of the reasons therefor. The Council shall either remove or reinstate the officer within thirty days after the filing of the statement.”

These sections clearly provide for the line authority from the City Council to the City Administrator to the Police Chief. The intent of the Charter to provide for “civilian” control over police operations is unambiguous.

City Policies

Section 5.1.(b)(5) empowers the City Administrator to maintain a “central personnel service for the administrative units;”. This authority includes the ability to establish the policies and procedures necessary to provide a safe and supportive work environment consistent and compliant with applicable rules and regulations. The following City policies are specifically applicable to the subject investigation:

- Human Resources Policy 2.1 establishes Employee Standards of Conduct applicable to all City staff. The policy identifies unacceptable behavior to include failure to behave in a professional and respectful manner (5.8); falsifying, misrepresenting and/or intentionally giving false information (5.21); insubordinate behavior (5.23); engaging in any form of harassment (5.24); threatening employees (5.26); engaging in behavior that is detrimental to operations of the workplace (5.28); and other provisions that were potentially applicable to the subject investigation.
- Human Resources Policy 2.6 addresses Progressive Discipline and is applicable to all City staff. Section 5.1 discusses Suspension Pending Investigation. The policy states suspension with/without pay is appropriate when “the facts pertaining to a particular incident are being investigated, and in the supervisor’s opinion, the employee should not continue working until the matter is dealt with.” It is important to note that I did not suspend Chief Cox but did place him in an Administrative Leave status. Administrative Leave is not by definition punitive in nature and does not trigger the requirements of Section 12.12 of the City Charter. However, the use of Administrative Leave to provide the “space” for a fair and respectful investigation is consistent with the Human Resources Policy.
- Human Resources Policy 2.12 establishes the City’s Anti-Harassment policy. The intent is to “reflect the City’s zero-tolerance for harassment.” Section 3.1C specifically states, “Retaliation, whether actual or threatened, against any complainant or witness, or anyone assisting in an investigation of a complaint, is expressly prohibited”.
- Human Resources Policy 2.14 was developed to provide definitions and protections against Workplace Bullying. Section 4.0 defines workplace bullying as, “repeated, unreasonable actions of individuals (or groups) towards an employee (or groups of employees), which is intended to intimidate”.

These policies are cited to provide part of the administrative basis for placing Chief Cox in an Administrative Leave status and initiating an investigation and are not intended to presume that any policy violations occurred prior to the performance of a proper investigation and review.

Police Department Policies

The following Ann Arbor Police Department (AAPD) has established the following Policy and Procedural Orders that are relevant to this matter:

- Policy and Procedural Order 082-011 allows a supervisor within the Police Department to void tickets for three reasons: officer error, emergency situation, and official business.
- Policy and Procedural Order 052-001(IV)(2)(c) states that “all personnel complaints” will be investigated.
- Policy and Procedural Order 052-001 (IV)(I) states, “The Office of the Chief bears the ultimate responsibility for the direction and control of the complaint process and for the professional standards of the department.”

Recruitment, Hiring, and Transition of Chief Cox

The City conducted a national search to find a new Police Chief using a recruiter specializing in municipal government. Chief Cox applied for the position and was one of three finalists brought to Ann Arbor for panel interviews. These interviews included a senior City staff group, a panel of local law enforcement and legal officials, a panel of community leaders, and a panel of Commissioners on the newly formed Independent Community Police Oversight Commission (ICPOC). Chief Cox also interviewed with City Council in open session. Considering the input from all of the interviews and my own reactions to his interviews, I recommended the hiring of Chief Cox to City Council. Council unanimously approved his appointment as Police Chief.

Chief Cox began his engagement in July 2019 and had the opportunities to meet various community leaders, provide presentations to civic groups, and get resettled in Ann Arbor. Throughout this period, I shared with him the challenges of going from a larger city to a smaller community, and that the issues he would face would be much different than those he experienced in Boston (where he recently retired after more than thirty years in the Boston Police Department). Specifically, I let him know that the AAPD was a leaner organization and relied on other City agencies for support, that he would have to be engaged in writing and implementing new approaches and strategies, and that personal relationships would be important to his success. Unlike the “big city” police issues he faced in Boston, Ann Arbor presented the challenge of connecting the AAPD to the community and building trust among all stakeholders and community members.

Throughout his relocation and transition, Chief Cox and I met on a frequent and recurring basis. In our discussions, I shared concerns I had received about communications with the command staff. I was very clear that if he felt resistance to change, I would be supportive of his initiatives. However, we expected professionalism in all of our relationships and the tone of our communications. I also asked several times for his written performance plan (as I have received from all of my direct reports) containing his goals and the performance measures for AAPD.

Placing of Chief Cox on Administrative Leave/Engagement of an External Investigator

I acted to place Chief Cox on Administrative Leave based upon the receipt of reports of his acting to exert undue influence on an internal investigation concerning parking enforcement and his actions creating a potentially hostile work environment within the AAPD Command Group. I was also concerned about this particular investigation as I had previously directed that he not intervene until he received the internal investigator’s report. During these discussions, Chief Cox expressed concern about these types of investigations “mushrooming” and drawing in AAPD leadership, to which I replied that the investigation must be allowed to go to its full conclusions.

I received supporting information during the evening of Thursday, February 6th, and due to the nature of the concerns I placed Chief Cox in an Administrative Leave status during the afternoon of Friday, February 7th. AAPD Policy and Procedural Order 052-001(IV)(2)(c) states that “all personnel complaints” will be investigated, and my action was consistent with AAPD and City policies.

I took this action for three primary reasons. First, I wanted to provide for a fair, impartial, and respectful investigation of the circumstances. Due to the nature of the complaints, the direct and daily contact of the Chief with the Command Group, and the close quarters in which the Command Group operates the only way to protect the investigation was to remove Chief Cox from daily operations for a short period. Second, I wanted to stop any deterioration of relationships within the Command Group before the problems became irreparable. Third, as the City Administrator I have obligations to protect the City as an entity through the enforcement of City policies that ensure compliance all applicable laws, regulations, and rules. I was aware of the potential external perceptions and implications of my actions but determined the long-term protection of the organization and individuals involved (including Chief Cox) outweighed any short-term disruptions that would result. During the meeting in which I notified Chief Cox of the Administrative Leave, I allowed him to read the statement of concerns, and the ensuing discussion indicated he was aware of the basis of my action.

Administrative Leave is not punitive in nature and is not equivalent to a “suspension.” My intent was to complete the investigation as quickly as possible, identify and implement any necessary corrective actions before the situation further deteriorated, and to go forward in a manner that would contribute to the success of AAPD as an organization and all of the individuals involved. I made this decision in consultation with the Assistant City Administrator (who is also the Acting Human Resources Director), the Human Resources Service Representative for the public safety unit, and the City Attorney’s Office.

My determination to employ an external investigator was based upon the involvement of the Police Chief, the Acting Human Resources, and senior AAPD personnel. Additionally, the analysis of a disinterested, credible external agent¹ would be consistent with community’s concerns about transparency and would provide a credible basis to move forward.

I requested the assistance of the City Attorney to identify an investigator with applicable skills and availability, and Ms. Meghan Norris of the Miller Canfield law firm was contacted on Monday, February 10th. Conflicts of Interest were cleared, and the investigation commenced on February 12th. Witnesses were interviewed on February 13th, 14th, 15th, and 18th. The investigatory report was received on February 20th and Attorney Norris presented it to the City Council and the City Administrator on February 21st². This sequence of events underscores and supports my intent to conduct the investigation quickly and professionally. I note that the Police Chief acknowledges the importance of the investigation and expresses his appreciation for the “investigator’s involvement in this matter.”

Discussion of the Investigator’s Findings and Chief Cox’s Response

The discussion below is intended to address the Investigator’s findings collectively, as they are interrelated. It is also important to take into account Chief Cox’s “ownership” of these issues and his commitment to

¹ Attorney Norris has previously served on the Detroit Police Commission.

² The report was initially scheduled for delivery on February 17th, however Chief Cox’s attorney requested that the Chief’s interview be moved from February 14th to February 18th.

improving communications and the importance of the example he sets for the Ann Arbor Police Department as we look to move forward.

There is no dispute that the Chief has the right to review, comment upon, and accept or reject the findings of an internal investigation. He also has the responsibility to use the investigatory process to teach and develop the skills of the Professional Standards staff. However, as stated in the Investigator's Report, the Chief's comments were "at a minimum insensitive to the concerns" that they appeared to unduly influence the outcome of the investigation, and to not pursue the actions of an involved supervisor.

The longstanding culture of AAPD is that internal investigations are conducted in a manner that is free of undue influence. Chief Cox should have been aware of and respectful of that culture. This need for independence in investigating the behavior of AAPD staff was a matter of discussion between the City Administrator and the Police Chief, with the resulting direction (which is not disputed) that Chief allow investigations to proceed to their unbiased conclusions, and that he always has the discretion to accept or reject the findings and conclusions – with the understanding and appreciation of the organizational impacts of those determinations.

Failure to follow established policies creates a sense of "privilege" in an organization that is responsible for enforcing our community's laws and standards – using force when necessary and appropriate. While the matter of addressing parking tickets under Policy and Procedural Order 082-011 may seem trivial, arbitrary enforcement of these policies undermines discipline and can lead to a larger disregard for policy. The lack of consistency in enforcing rules also becomes an issue in settling disputes and grievances.

Significantly, the appearance of the Chief acting to protect a supervisor undermines public confidence in AAPD's integrity and ability to investigate itself. My discussion with the Chief clearly stated that concern, and that actions that cloud the transparency of police matters were a primary reason for the formation of the ICPOC.

Although the Investigator concluded that Chief Cox did not create a hostile work environment in a formal and legally definable sense, which I was pleased to see, she does state that the persons under his control had reason to fear retaliation. The behavior presents a problem under the Human Resources policies cited above, and under any circumstance would be the cause to initiate an investigation and review.

Chief Cox has stated that he uses the Socratic method in the development of his junior leaders, and this questioning approach can be an effective tool to enhance learning and decision making. However, the person in authority must always be clear about intent. The ambiguous nature of his questioning is problematic and may be properly construed as a means to avoid providing clear direction. Chief Cox should be cognizant that the burden is always on the senior person – the one with greater authority – to ensure there is no ambiguity in direction.

It is important to consider that the Chief of Police position is a well-respected and influential leader within the culture of the City as a whole and AAPD specifically. The Chief of Police should always be aware that the tone he or she sets cascades through the organization, and that courteous, professional communications promote open exchanges which are wholly consistent with the community-based policing strategies the City is endeavoring to implement.

In Chief Cox's response, he takes ownership of his responsibility to ensure that he imparts direction and instruction in a clear and unequivocal manner, and he is apologetic for any misunderstandings that he created.

The sincerity of his response speaks well of his character and integrity, which will be the foundation of his path forward with AAPD. However, a successful outcome is neither certain nor guaranteed, and Chief Cox's commitment to engaged and professional leadership are essential to rebuilding trust and confidence within AAPD. While I will not be present to supervise his return, given his response I am hopeful that he and his staff can re-establish a strong and effective team.

Further, while the Investigator's report contains findings of insubordination, I do not consider Chief Cox to be intentionally subordinate. Nevertheless, his comments about "not having a boss" as it relates to police operations are problematic. While working within to a smaller police agency with a direct reporting relationship with the City Administrator has been an adjustment, it does not excuse the belief that he can operate without control. I believe the Investigator's report will help him to clarify roles, responsibilities, and authorities – which will be especially important as the City progresses through a change in leadership.

Finally, Chief Cox's response re-affirms his commitment to AAPD's core values of investigating misconduct and non-interference in an investigation. In fact, he highlights this with the statement that any notion to the contrary would be devastating. Chief Cox admits that his words and actions during the parking investigation were not clearly communicated – and these words and actions are about the core values of the department. Chief Cox does not dispute the affect these words and actions had on the Lieutenant nor does he dispute Ms. Norris' conclusion that the Chief's words and actions reasonably were interpreted as contrary to these core values by the Lieutenant and others.

The Lieutenant's reasonable reaction to communications she viewed as contrary to AAPD's values mirrors exactly Chief Cox's reaction – any notion to the contrary would also be devastating. This is why I agree with Chief Cox's recognition that the Lieutenant's raising of these concerns was not only proper but absolutely necessary. It is also why I determined that an outside investigation was necessary: the core values of our police department were at stake.

Recommendations

Based upon the investigation and supporting materials, I offer the following recommendations to City Council for implementation by the City Administrator with appropriate oversight from Council:

- The period of Chief Cox's Administrative Leave should be terminated, with Chief Cox returning to duty subject to the conditions below and based upon the schedule the incoming Interim City Administrator provides. I think it important to re-emphasize that the Administrative Leave was not a suspension, counter to Chief Cox's misstatement.
- Human Resources Policy 2.6 addresses the City's approach to progressive discipline, and the Investigator's Report, Chief Cox's response, and this memorandum should remain in his file and serve as formal counseling and admonishment for the behavior. Consistency in the application of the policy is important in both this and subsequent cases that may be considered and will reinforce the Chief's standing when he imparts disciplinary measures in the future.

Although I have the authority to issue a suspension, I am not taking that action given the extenuating circumstance that I will not be the City Administrator after February 29, 2020. It would be unfair to the Interim City Administrator, AAPD, and City Council for me to impose a suspension without my having the opportunity to personally work with Chief Cox in the aftermath. This is a unique factor that I must in good

conscience take into consideration. If the City Council feels differently, then they as a body can work with the Interim City Administrator to revisit this issue.

- Chief Cox must meet with his Command Group, the command officers (lieutenants and sergeants), and the various shifts and patrols, and union representation. While apologizing for any misunderstandings and poor communications is a prerequisite for a return, Chief Cox would benefit from more direct and positive contact with the sworn officers, the Community Standards Officers, and administrative staff. The Interim City Administrator should participate in these discussions and meetings as appropriate to demonstrate a unity of command and spirit of mutual support. I also recommend that an outside facilitator be used to evaluate organizational culture and to help open channels of communication throughout AAPD.
- Chief Cox must demonstrate his support of the ICPOC through his regular attendance at and participation in the Commission's meetings. He should provide a Chief's update at every ICPOC meeting, in which he discusses items of importance to ICPOC members. The Chair and Vice Chair of the should support the Chief in this requirement.
- AAPD must provide training on the awareness and enforcement of Policy and Procedural Order 082-011. There also needs to be a review at the command level to ensure internal control.
- Policy and Procedural Orders 052-001 (IV)(I) and 052-001(IV)(2)(c) should be reviewed to ensure that the necessary controls are in place so that the integrity of internal investigations is not compromised. The Chief should retain final review and approval of the investigation report and provide coaching as necessary, but the policy must state the investigation is to be conducted independently and without undue influence. Reports involving significant officer misconduct should be presented to the City Administrator and Human Resources Director prior to the report being finalized.

The matters presented in the Investigator's Report, Chief Cox's response, and this memorandum are serious in nature. Chief Cox recognizes his responsibilities as the organizational leader and should acknowledge the need for his actions to be addressed under City and AAPD personnel practices. With the implementation of the above recommendations, it is everyone's hope that Chief Cox can be the inspirational leader AAPD deserves.