# CIVILIAN REVIEW AUTHORITY WORKING GROUP FINAL REPORT


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## CIVILIAN REVIEW AUTHORITY WORKING GROUP RECOMMENDATIONS

### BACKGROUND

The Civilian Review Authority (CRA) Working Group was established by the Minneapolis City Council on February 24, 2006. Its purpose was to address the recommendations in the report A Study of the Policy and Process of the Minneapolis Civilian Police Review Authority ("CRA Report") written by Michael K. Browne. Council President Barbara Johnson appointed members of the Group on March 28, 2006 (see Appendix A). The Working Group met 15 times from mid-April through August 2006, and held two sessions for public comment. A summary of the public comments received is available in Appendix B.

The Working Group submitted two previous reports to City Council. Internet addresses for these reports and the CRA Report are listed in Appendix C.

The Working Group drew on the experience of leaders throughout City government, and demonstrated the shared commitment to improve this necessary and important process. This report is a summary of the Working Group's recommendations. On most of the recommendations, members were able to reach consensus. Where there were disagreements, they are noted. A record of votes on the recommendations is in Appendix D. The City Council and/or Mayor are ultimately responsible for final decisions on any of these topics.

### RECOMMENDATIONS

#### PART I: ADMINISTRATIVE CHANGES – NO COUNCIL ACTION REQUIRED AT THIS TIME

#### 1. Audit of the Minneapolis Police Department Internal Affairs Unit

The CRA Report suggested a similar study be commissioned for the Internal Affairs Unit of the Minneapolis Police Department (MPD), which also conducts investigations of complaints against police officers.

The CRA Working Group recommended that a review of Internal Affairs Unit operations be conducted by an outside, independent auditor, and that the Request for Proposals for the auditor, the respondents to the RFP, and interim and final reports of the auditor be reviewed by the Public Safety and Regulatory Services Committee.

Audits of other cities' Internal Affairs Units have considered things like number and rate of complaints, types of complaints, investigation quality, rate of sustained cases, and satisfaction with the complaint resolution process.

The City Council adopted this recommendation on May 12, 2006. The City will hire a consultant for the audit in 2007, although funding for the audit has not been dedicated yet.

## 2. Improved Early Intervention System for Police Department

A group with members from the Police Department, the City Coordinator's Office/Human Resources, the Civil Rights Department, the City Attorney's Office, and the Police Federation, is working to improve the Early Intervention System for police.

Early Intervention Systems are computerized databases on police officer performance that allow departments to identify officers who are having performance problems and intervene before there is a serious incident. Early Intervention Systems use information on performance such as citizen complaints, use-of-force or firearms discharge reports, vehicular damage reports, absenteeism, and other data. When an officer's behavior appears problematic based on these data, the officer's supervisor can require classes or counseling as intervention. Departments continue to monitor the officer's performance after the initial intervention.

The MPD has had an "Early Warning System" since the early 1990s, but there have been significant changes in its administration and the data collected over time. The staff group is attempting to improve the current system by carefully selecting data to measure and deciding what measurements indicate a potential problem.

## 3. MPD Senior Command Officer as liaison to the Civilian Review Authority

Assistant Chief Sharon Lubinski was designated MPD liaison to the CRA by Interim Chief Tim Dolan. She attends CRA Board meetings and is in regular communication with the CRA Board Chair. She is able to answer questions about MPD Policy and Procedure or police officer training as needed.

## 4. Improvements to case files

Case files will now include separate documents with improved formats for summary of the CRA staff investigation of the complaint (Figure 1) and the decision that the CRA Board makes about the complaint (Figure 2). The new formats will make case files more clear and complete.

**Figure 1 – sample summary of staff investigation and recommendation**

**CITY OF MINNEAPOLIS**
**CIVILIAN POLICE REVIEW AUTHORITY**

*Note: This document is included in the investigative file for the sole benefit of the hearing panel.*

| | |
|---|---|
| *In re* Police Misconduct Investigation of :<br><br>Subject Officer | **WRITTEN SUMMARY OF INVESTIGATIVE FINDINGS OF FACT AND RECOMMENDATION**<br>CRA File No: XXXX |

Pursuant to Minneapolis Code of Ordinance Title 9, Chapter 172 § 172.10, the Minneapolis Civilian Police Review Authority (CRA) has the authority to adjudicate citizen complaints alleging misconduct against members of the Minneapolis Police Department (MPD) as provided by that chapter. This complaint was timely filed in the proper form as required by §§ 172.70 and 172.160, and the complaint has been referred to a panel of the board for hearing as provided by § 172.100.

**I. SUMMARY OF COMPLAINT ALLEGATIONS**

In a complaint filed with the Minneapolis Civilian Police Review Authority, Complainant alleged the following:

A. **Inappropriate Conduct**. Subject Officer conducted himself inappropriately toward complainant in the following manner:

B. **Inappropriate Language**

1. Subject Officer used inappropriate language toward complainant when he said to complainant, "Are you stupid?"

**II. ISSUE(S)**

I. Did the subject officer display inappropriate conduct during the stop, arrest, detainment, and the during the property inventory procedure?

I. Did the subject officer use inappropriate language toward the complainant during the stop?

**III. SUMMARY OF EVIDENCE**

(A list of the evidence – statements of Witnesses, Complainants, and Subject Officers, reports, medical records, and description of physical evidence and photographs)

Statements
1. Statement of the Complainant
2. Statement of the Subject Officer

Records
1. CAPRS report
2. ECC Log
3. Email from Complainant to MPD
4. Complainant's written statement of the events
5. MPD property inventory

Physical evidence (if applicable)

Photographs (if applicable)

## IV. INVESTIGATIVE RECOMMENDED FINDINGS OF FACT

Based on a review of the evidence gathered by the CRA investigation, the complaint investigator finds the material facts regarding this complaint to be:

1. On _____ at 3:30 p.m., Complainant was pulled over by Subject Officer after driving down the bus lane on Scott Avenue and allegedly parking partially on the sidewalk in front of a store.
2. Subject Officer approached the driver's window of the minivan.
3. Complainant alleged that Subject Officer asked him, "Are you stupid?" Subject Officer denied this allegation.
4. Subject Officer asked Complainant for his license.
5. When Complainant responded that he did not have a license, Subject Officer asked Complainant to step out of the vehicle.
6. Upon exiting the vehicle, Complainant tried to put his comb into his pocket, alarming Subject Officer who grabbed at Complainant's hand.
7. Complainant's comb fell to the ground.
8. Subject Officer told Complainant to keep his hands out of his pockets, and then turned Complainant around, frisked him, handcuffed him, and placed Complainant in the back of his squad car.
9. Subject Officer arrested Complainant for driving after revocation and a traffic violation.

## V. INVESTIGATIVE ASSESSMENT OF CREDIBILITY

## VI. STANDARD OF PROOF

The standard of proof necessary to sustain a complaint under Chapter 172 is preponderance of the evidence. Preponderance of the evidence means that the greater weight of the evidence supports the decision. (§ 172.110.)

**VII. INVESTIGATIVE ANALYSIS AND RECOMMENDATION**

**Allegation I**: **Inappropriate Conduct**

It is recommended that this allegation be **not** sustained.

**Allegation II**: **Inappropriate Language**

It is recommended that this allegation be **not** sustained.

Pursuant to the Civilian Police Review Authority Ordinance, the investigator presents the Investigative Findings of Fact and Recommendation to a hearing panel.

| | |
|---|---|
| Date:_____ | _____<br>Investigator |

Concurred by

| | |
|---|---|
| Date:_____ | _____<br>CRA Manager |

**Figure 2- Sample CRA Board decision**

CITY OF MINNEAPOLIS
CIVILIAN POLICE REVIEW AUTHORITY

| | |
|---|---|
| *In re* Police Misconduct Investigation of : | FINDINGS OF FACT AND DETERMINATION |
| Subject Officer | CRA File No: XXXXX |

**Jurisdictional Statement:**

This Complaint of police misconduct was filed with the Minneapolis Civilian Police Review Authority on (date). Complainant alleges that on (date), the Subject Officer engaged in (allegations) *inappropriate conduct and inappropriate language* during an encounter with the Complainant. This administrative agency has jurisdiction over the matter because the Complaint was timely filed, and the Complaint alleged incidents of police misconduct against a Minneapolis police officer.

Pursuant to Minneapolis Code of Ordinance Title 9, Chapter 172 § 172.100 (a), a properly convened Hearing Panel consisting of _____, _____, _____ reviewed the investigative findings and recommendation on Pursuant to Minneapolis Code of Ordinance Title 9, Chapter 172 § 172.100 (d), the Hearing Panel issues the Findings of Fact and Determination.

**Findings of Fact:**

1. On _____ at 3:30 p.m., Complainant was pulled over by Subject Officer after driving down the bus lane on Scott Avenue and allegedly parking partially on the sidewalk in front of a store.
2. Subject Officer approached the driver's window of the minivan.
3. Complainant alleged that Subject Officer asked him, "Are you stupid?" Subject Officer denied this allegation.
4. Subject Officer asked Complainant for his license.
5. When Complainant responded that he did not have a license, Subject Officer asked Complainant to step out of the vehicle.
6. Upon exiting the vehicle, Complainant tried to put his comb into his pocket, alarming Subject Officer who grabbed at Complainant's hand.
7. Complainant's comb fell to the ground.
8. Subject Officer told Complainant to keep his hands out of his pockets, and then turned Complainant around, frisked him, handcuffed him, and placed Complainant in the back of his squad car.
9. Subject Officer arrested Complainant for driving after revocation and a traffic violation.

**Issues**:

I. Did the subject officer display inappropriate conduct during the stop, arrest, detainment, and the during the property inventory procedure?

II. Did the subject officer use inappropriate language toward the complainant during the stop?

**Standard of Proof:**

The Hearing Panel makes a determination as to whether to Sustain or Not Sustain the allegations of police misconduct. Sustain complaints are determined by a preponderance of the evidence presented.

**Summary**

**Allegation I**: **Inappropriate Conduct**

*Summary*

*The Hearing Panel's determination is that the allegation of inappropriate conduct against Subject Officer be NOT SUSTAINED.*

*If multiple officers, the statement should be as follows:*
*Officer XXXX – The Hearing Panel determination is that the allegation of inappropriate language be NOT SUSTAINED.*
*Officer YYYY – The Hearing Panel determination is that the allegation of inappropriate language be NOT SUSTAINED.*

**Allegation II**: **Inappropriate Language**

*Summary*

*The Hearing Panel determination is that the allegation of inappropriate language against Subject Officer be NOT SUSTAINED.*

*If multiple officers, the statement should be as follows:*
*Officer XXXX – The Hearing Panel determination is that the allegation of inappropriate language be NOT SUSTAINED.*
*Officer YYYY – The Hearing Panel determination is that the allegation of inappropriate language be NOT SUSTAINED.*

Pursuant to Minneapolis Code of Ordinance Title 9, Chapter 172 § 172.130, the Hearing Panel forwards this Determination to the Chief of the Minneapolis Police Department who shall make a disciplinary decision based on the investigative file, Hearing Panel's findings of fact and determination.

## 5. Formation of Police Accountability Coordinating Committee

The Police Accountability Coordinating Committee (PACC) has been formed with members from CRA, Civil Rights, MPD, the Mayor's office and the City Council (Figure 3). Its purpose is to encourage communication among those responsible for police accountability within the City on administrative issues, policy recommendations, community outreach, patterns of complaints, and other police accountability topics. The PACC will not discuss individual cases.

**Figure 3 – Description of the Police Accountability Coordinating Committee**

Police Accountability Coordinating Committee- approved 7/20/06

Establishment of PACC -

There should be a standing monthly meeting, occurring the last week of the month (Time TBD), with the participation of the following or their designees:

| | |
|---|---|
| MPD/CRA Liaison | Civil Rights Director |
| CRA Manager | HE&E Chair |
| IAU Commander | PS&RS Chair |
| CRA Board Chair | Mayor |
| | Police Chief |

Purpose –

The Police Accountability Coordinating Committee is an informal forum for addressing police accountability issues and concerns among the CRA, Civil Rights, and MPD, by promoting communication and greater understanding among the entities dedicated to public safety and police accountability. The PACC may address the following topics:

a. Administrative issues concerning CRA, IAU, Civil Rights
b. MPD policy recommendations
c. Disciplinary decisions
d. Community outreach
e. Emerging trends: patterns of complaints
f. Other matters deemed appropriate

Staffing –

The MPD shall provide administrative staff to be responsible for PACC coordination, including the creation and distribution of a formal agenda and the documentation of action items from PACC meetings.

Timelines –

There shall be a 30 day timeline for response to inquires and rebuttals, extendable to 60 days.

Documentation –

All CRA policy of substance, inquiries, MPD responses should be presented in written form. Activities of the group shall be reported to City Council as part of the quarterly CRA report.

Additional Considerations –

- The CRA, MPD, and Civil Rights should institutionalize the PACC and meetings by directive or administrative announcement.
- The Chair or Co-chairs shall be determined by the PACC.
- The PACC shall determine the process for conducting its business.
- The PACC will not discuss individual cases.

## 6. Processes for CRA Board to recommend changes to the MPD Policy and Procedure Manual

The Working Group designed two processes through which the CRA Board can recommend changes to the MPD Policy and Procedure Manual. Policy recommendations will be separate from case determinations. In the "routine" process (see Figure 4), the CRA Board or staff identifies a policy issue and brings the issue to the Police Accountability Coordinating Committee (PACC). The Police Department responds to the suggestion or inquiry within 30-60 days and either implements the recommendation or rejects the recommendation. If the CRA is not satisfied with the outcome of the routine process, they can initiate the "extended" process (see Figure 5). This process includes reporting to the Mayor and the City Council.

**Figure 4 – Routine CRA Policy Recommendations Process**

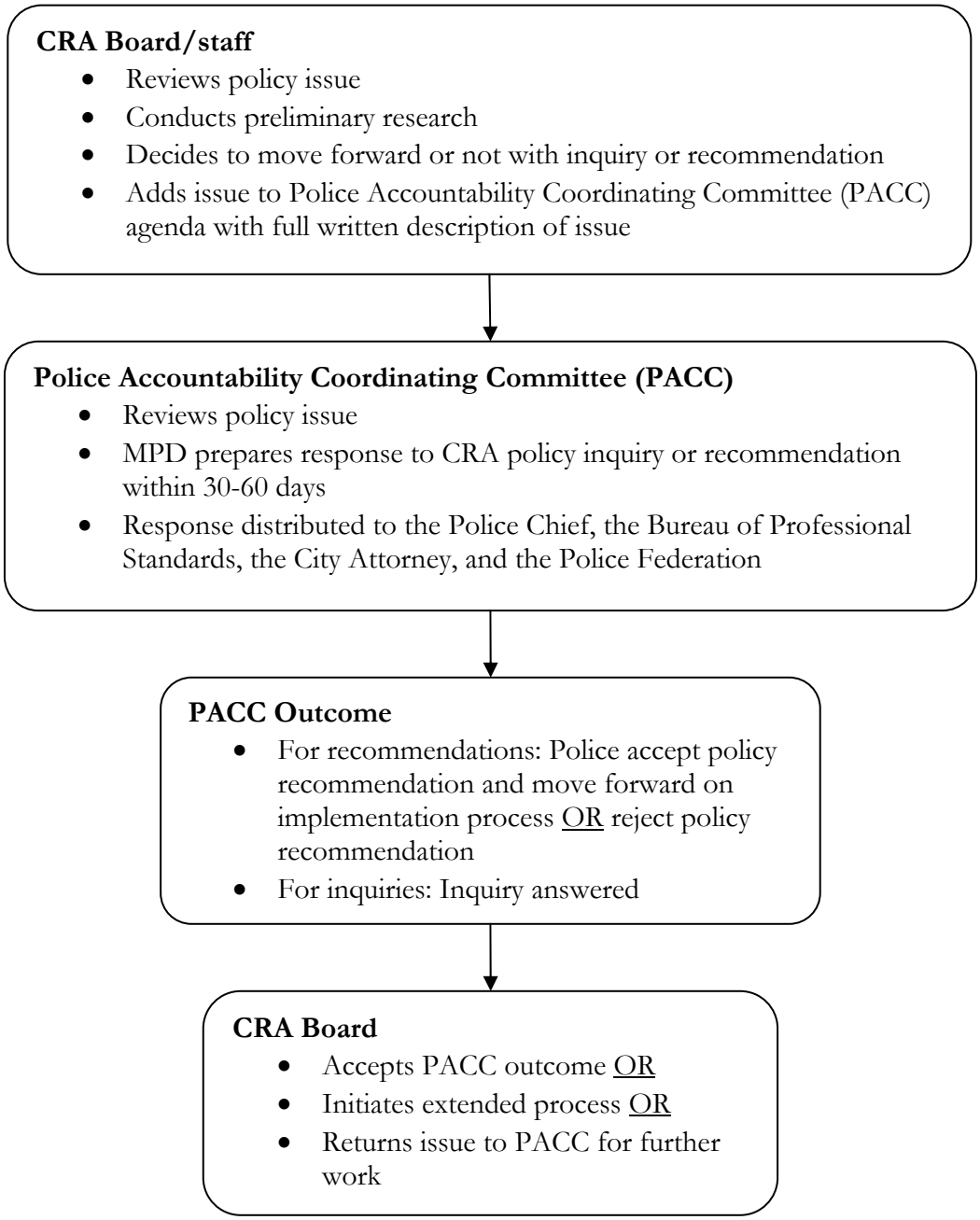
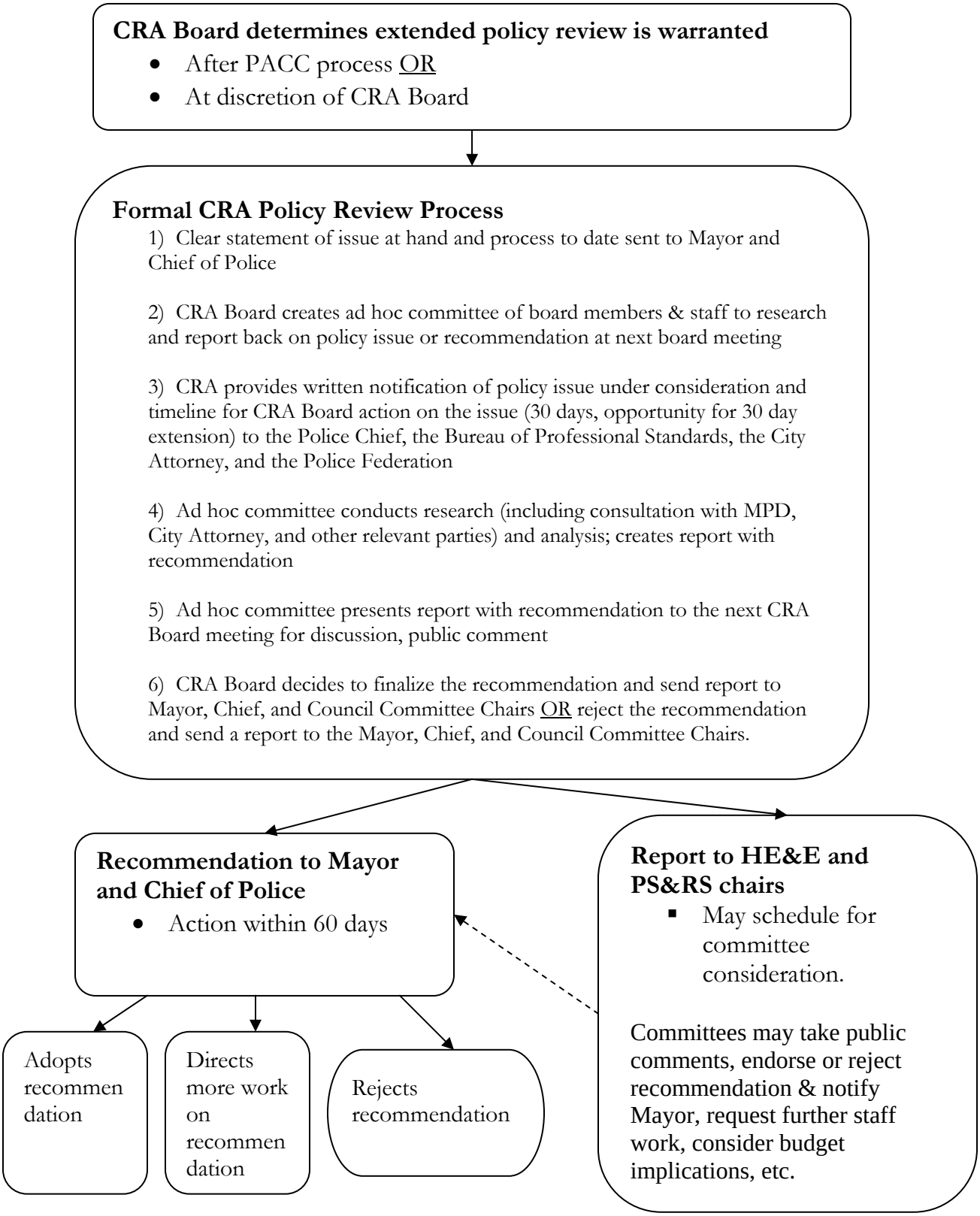


**Figure 5 – Extended CRA Policy Recommendations Process**



### 7. Study of satisfaction with complaint process

The CRA Staff will work to develop measures of participant (both complainants' and officers') satisfaction with the complaint process. They will seek expert help in order to avoid bias related to a participant's feelings about the outcome of their case.

### 8. Training for CRA and IAU

The Group endorsed the idea of more training on police accountability issues for CRA Staff and Board and MPD Internal Affairs, but did not specify training content. The CRA and MPD will work together through the PACC to refine which particular training sessions would be recommended and offered.

CRA board members already undergo training including the MPD Citizen's Academy (selected sessions are required), a yearly board training and topic-specific sessions by the Minneapolis Civil Rights Department (required), and attendance at the National Association for Civilian Oversight of Law Enforcement (NACOLE) annual conference.

### 9. CRA Board will review all cases

The Group rejected having the CRA Board only review cases that CRA staff recommends sustaining. The CRA Board will continue to have the final ruling on all cases regardless of staff recommendation.

### 10. No appeal to Administrative Law Judge

The Group rejected having a process to appeal a CRA Board decision to an Administrative Law Judge by a 10-2-2 vote. (See Appendix D for a record of all votes.)

## PART II: LEGISLATIVE AGENDA AND ORDINANCE CHANGES – COUNCIL ACTION REQUESTED

### 1. CRA subpoena power

The Working Group recommends that the City Council should add passage of a special law granting the CRA subpoena power to its legislative agenda. If a special law is not enacted, the City should consider pursuing a charter amendment. (Based on several City Attorney's opinions, which can be found in Appendix E, the Group felt that legislative or charter change is necessary, and that subpoena power could not be granted through ordinance.)

- The purpose of subpoena power would be to improve the quality of CRA staff investigations.
- Subpoena power would be used to obtain information relevant to the allegations from entities outside the City organization.
- The CRA Manager would be the entity authorized to issue subpoenas at his or discretion with a request from a CRA Staff Investigator with the following checks on this authority:
    a. Any subpoenas would become a part of the case file, to which the subject officer has full access once the investigation is complete. If, upon reviewing the file, the officer feels that information was subpoenaed inappropriately, he or she can bring that complaint to the Civil Rights Director, the Mayor, the City's Ethical Practices Board, or the Minnesota Lawyers Professional Responsibility Board.
    b. The officer under investigation would be notified at the time of the CRA Manager issuing any subpoena on personal records (medical, financial, or employment records). The officer would be given an opportunity to object to the CRA Manager, the CRA Board, and/or District Court.

The Working Group passed this recommendation on a 9-1-2 vote.

**Requested action: Approve adding passage of a special law granting the CRA subpoena power to the City's Legislative Agenda. Refer to the Intergovernmental Relations Committee.**

### 2. Complaint dismissal (in ordinance)

The Working Group recommends adding a new section Minneapolis Code of Ordinances (MCO) 172.85 Dismissal after preliminary review to allow the CRA Manager to dismiss administratively complaints against misidentified officers, out-of-jurisdiction officers, and officers no longer with the Minneapolis Police Department and to allow the Manager to request that the Board dismiss complaints where investigation beyond preliminary review is not warranted.

The Working Group approved this recommendation unanimously.

**Requested action: Approve amendment to Chapter 172 to establish complaint dismissal after Preliminary Review:**

**172.85 Dismissal after the Preliminary Review.** (a) If after the preliminary review, the Manager determines that further investigation is not warranted, the Manager may request a dismissal from the Chair of the Board. The dismissal request must state the basis for the dismissal. The Chair shall schedule a hearing for the dismissal.
(b) The Manager may administratively dismiss complaints against misidentified officers, officers out-of-jurisdiction, and officers no longer with the MPD. The Manager shall notify the CRA Board of the administrative dismissal.

### 3. Complaint dismissal (in administrative rules)

The Working Group recommends amending Minneapolis Civilian Police Review Authority Administrative Rules to detail the administrative complaint dismissal process and the process for complaint dismissal after preliminary staff review.

This recommendation was approved 13-0 by the Working Group.

**Requested action: Approve amendment to Minneapolis Civilian Police Review Authority Administrative Rules to detail complaint dismissal processes:**

**I. Complaint Dismissal**

1. Dismissal After Preliminary Review.
    a. If the Manager finds that further investigation is not warranted after the preliminary review stage or that a complainant has failed to provide the information identified in Rule 7(E), the Manager may request a dismissal of the complaint.
    b. When the Manager requests a dismissal, the request must include the basis of the dismissal and any supporting documentation, the Manager shall present the request for dismissal to a three-member hearing panel for final disposition.
    c. When a complaint is dismissed, the complainant may request a Reconsideration Hearing to reactivate the complaint.
    d. Upon dismissal of a complaint under this section, a notice of dismissal setting forth the basis for the dismissal will be sent to the Chief of Police.

2. Administrative Dismissal
    a. If the Manager finds that the complainant has filed a complaint against a misidentified officer, an officer outside of CRA's jurisdiction, or an officer no longer with the Minneapolis Police Department, the Manager may dismiss the complaint.
    b. The Manager shall forward an administrative dismissal form to the Director of Civil Rights for signature.
    c. When a complaint has been dismissed by administrative dismissal, the Manager shall present a copy of the administrative dismissal form to the entire Board.

d. In the event that an officer has been reinstated to the Minneapolis Police Department, the Manager shall have the authority to reactivate the complaint. The Minneapolis Police Department shall provide the CRA with notification of all officers who have been reinstated. This notification shall include the officer's date of reinstatement.
e. Nothing above shall prohibit the generation of a complaint in the name of the correctly identified officer's name.

**4. Definition of "misidentified officer"**

The Working Group recommends amending Minneapolis Civilian Police Review Authority Administrative Rules to define "misidentified officer."

This recommendation was approved 13-0 by the Working Group.

**Requested action: Approve amendment to Minneapolis Civilian Police Review Authority Administrative Rules to define "misidentified officer:"**

**Rule 3. Definitions**

**Misidentified Officer.** A misidentified officer is an officer whose identity was misidentified by the complainant, and where staff has verified by documentation and other means that the misidentified officer was not involved in the events of the complaint.

**5. Notification of officer reinstatement**

The Working Group recommends adding a new section MCO 172.185 Notification of officer's reinstatement to require MPD to notify the CRA of a dismissed officer's reinstatement to the Minneapolis Police Department.

This recommendation was approved 13-0 by the Working Group.

**Requested action: Approve amendment to Chapter 172 to require notification of officer reinstatement:**

**172.185 Notification of officer's reinstatement.** In the event that a dismissed officer has been reinstated to the Minneapolis Police Department, the Chief of Police shall provide notification to the CRA of the officer's return to the department within 30 days of the officer's reinstatement.

**6. Requirement of a sworn and signed statement**

The Working Group recommends amending Minneapolis Civilian Review Authority Administrative Rules to require a signed and sworn statement from the complainant.

This recommendation was approved 13-0 by the Working Group.

**Requested action: Approve amendment to Minneapolis Civilian Police Review Authority Administrative Rules to require a signed and sworn statement:**

**Rule 7. Filing a Complaint.**
**~~F~~E. Information required.** The complainant must provide at a minimum, the following information:
1. Name, address, telephone number, date of birth; if a complaint is filed on behalf of someone else, this information concerning the minor, deceased person or the vulnerable adult must be filed;
2. Alternate means of contact; if a complaint has been filed on behalf of someone else, this information concerning the minor, or the vulnerable adult must also be filed;
3. Written statement setting forth the allegation(s), including: date, time, and location of the alleged misconduct and any other pertinent details;
4. Identification of police officer (badge and/or name and/or description). The assigned investigator will assist the complainant with the identification in the event that a complainant is unable to produce a badge number or name.
5. Upon the request of an Authority investigator, a signed and sworn statement made to the Authority investigator about the details of the complaint.

**7. CRA Scope of authority**

The Working Group recommends amending MCO 172.20 Scope of authority to include "Any violation of the MPD's Policy and Procedure Manual."

This recommendation was approved 13-0 by the Working Group.

**Requested action: Approve amendment to Chapter 172 to add "Any violation of the MPD's Policy and Procedure Manual" to the CRA scope of authority:**

**172.20. Scope of authority.** The review authority shall receive complaints that allege misconduct by an individual police officer or officers, including, but not limited to, the following:

a. Use of excessive force.
b. Inappropriate language or attitude.
c. Harassment.
d. Discrimination in the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability or age or sexual orientation.
e. Theft.
f. Failure to provide adequate or timely police protection.
g. Retaliation for filing a complaint with the review authority. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 2, 3-21-03)
h. Any violation of the MPD's Policy and Procedure Manual

**8. Discipline**

The Working Group recommends amending MCO 172.130 Disciplinary decision to define "disciplinary decision" and to establish the basis for the Police Chief's disciplinary decision.

The Working Group passed this recommendation 8-5.

**Requested action: Approve amendment to Chapter 172 to define "disciplinary decision" and to establish the basis for the Police Chief's disciplinary decision:**

172.130 Disciplinary Decision. (a) Upon conclusion of the hearing and request for reconsideration process, the review authority shall forward the investigatory file, the findings of fact and the panel determination to the chief of police, who shall make a disciplinary decision based upon this information. A disciplinary decision is the issuance of a verbal warning, written warning, suspension, or termination. The chief's disciplinary decision shall be based on the adjuicated facts as determined by the CRA Board, and shall not include a de novo review of the facts by the MPD's Internal Affairs Unit or any other police officer, unit, or division. Under this ordinance, a sustained CRA complaint shall be deemed just cause for disciplinary action by the chief of police or the mayor of Minneapolis.

In cases where the CRA Board has determined that specific facts constitute a violation of the MPD Policy and Procedure manual, under no circumstances should the MPD Internal Affairs Unit or any other police officer, unit, or division be allowed to alter, augment, or revise the designation.

In all cases where the review authority sustained the complaint, the chief of police shall provide the review authority and the mayor with a written explanation of the reason(s) for that disciplinary decision.

(b) The review authority shall provide notice to the complainant of the final disciplinary decision. (90-Or-043, §1, 1-26-90; 2003-Or-028, §§ 18, 19 3-21-03)

**Appendix A: Group Membership**

Council Member Robert Lilligren, Chair
Council Member Cam Gordon, Vice Chair
Council Member Don Samuels
Council Member Elizabeth Glidden
Council Member Ralph Remington
Council Member Betsy Hodges
Sherman Patterson, Policy Aide to Mayor R.T. Rybak
Michael K. Browne, Interim Director, Civil Rights Department
Samuel L. Reid, II, CRA Manager, Civil Rights
Peter Ginder, Deputy City Attorney
Michael Weinbeck, CRA Board Chair
Tim Giles, Chief Labor Negotiator
Jim Michaels, Minneapolis Police Federation
Sharon Lubinski, Assistant Police Chief

The Working Group was also assisted by City staff members Kelly Brewer, Natalie Collins, Lieutenant Michael Davis, Robin Garwood, Deputy Chief Donald Harris, Ben Hecker, Andrea Jenkins, Kim Malrick, Lisa Miller, Vaman Pai, Clara Perrin, Gail Plewacki, Susan Trammell and Jose Velez. CRA Board Members Anne Cross and Michael Friedman and Former Council Member Paul Zerby also participated in some of the Group's discussions.

**Appendix B: Summary of public comments**

The Working Group solicited public comments twice: at a regular Group meeting in City Hall and at a special evening meeting held at the Brian Coyle Center. The Group also accepted comments by mail, e-mail, and phone. Copies of the original comments are available from Natalie Collins.

26 comments were received. Many expressed opinions in more than one of the following topic areas:

**15** expressed **general concern** for having a CRA process that functions well (the need for police accountability and the importance of the CRA).

**15** comments also addressed concerns with **discipline** and the way the Police Chief handles complaints that have been sustained by the CRA Board. The majority felt that there should be real consequences for sustained complaints or that Chief should be required to issue discipline on sustained cases.

> Four people expressed concern at how long it takes to make a disciplinary decision. Three mentioned the relationship of discipline to a case file becoming public information. One of these suggested that the City and community should advocate for a change to the Minnesota Data Practices Act that would classify CRA-sustained cases as public information.

**Four** said that the CRA should be given **subpoena power**.

**Four** comments suggested that there should be more public **visibility** to the process.

**Three** of the people who commented referenced negative experiences that their **children** had with Minneapolis police officers.

**Two** people were upset about police officers having a **dismissive attitude** towards people who live in areas especially affected by crime, and acting like the department's lack of resources means they don't have to help.

**One** person expressed concern about the **politics** involved in appointments to the CRA Board.

**One** person suggested that Minneapolis should consider implementing some of the police accountability mechanisms that **Saint Paul** uses, including having officers distribute actual business cards (rather than a badge number or case number) and brochures that explain the complaint process.

Several people acknowledged in their comments that police officers have a difficult and important job.

**Appendix C: Links to related reports**

Reports to Council
http://www.ci.minneapolis.mn.us/council/2006-meetings/20060512/HEE20060501agenda.asp
Item #6

http://www.ci.minneapolis.mn.us/council/2006-meetings/20060630/HEE20060619agenda.asp
Item #9

A Study of the Policy and Process of the Minneapolis Civilian Police Review Authority – 02/01/06
http://www.ci.minneapolis.mn.us/cra/docs/CRAReport_2006.pdf

**Appendix D: Votes on recommendations**

**Internal Affairs Audit**
Adopted by consensus. No vote recorded.

**Improved EIS**
Adopted by consensus. No vote recorded.

**MPD Liaison to CRA**
Adopted by consensus. No vote recorded.

**Improvements to case files**
Aye: Lilligren, Gordon, Samuels, Glidden, Hodges, Browne, Reid, Ginder, Weinbeck, Giles, Michels, Lubinski
Absent: Remington

**PACC and Policy recommendation processes**
Aye: Lilligren, Gordon, Glidden, Remington, Hodges, Browne, Reid, Ginder, Weinbeck, Giles, Michels
Abstain: Patterson
Absent: Samuels, Lubinski

**Satisfaction study**
Aye: Lilligren, Gordon, Glidden, Remington, Hodges, Browne, Reid, Weinbeck, Giles, Michels, Lubinski
Abstain: Patterson
Absent: Samuels, Ginder

**Training**
Aye: Lilligren, Gordon, Samuels, Glidden?, Remington, Hodges, Browne, Reid, Weinbeck, Giles, Michels, Lubinski
Abstain: Patterson
Absent: Ginder

**CRA Board reviews all cases**
Aye: Lilligren, Gordon, Glidden, Hodges, Ginder, Weinbeck, Giles, Michels, Lubinski
Nay: Browne, Reid
Absent: Samuels, Remington

**No appeal to ALJ**
Aye: Lilligren, Gordon, Glidden, Remington, Hodges, Giles, Michels, Lubinski
Nay: Browne, Reid
Abstain: Patterson, Weinbeck
Absent: Samuels, Ginder

**Subpoena power**
Aye: Lilligren, Gordon, Glidden, Remington, Hodges, Browne, Reid, Weinbeck, Giles
Nay: Michels
Abstain: Ginder, Lubinski
Absent: Samuels, Patterson

**Ordinance and administrative rules changes re: complaint dismissal, definition of "misidentified officer," notification of officer reinstatement, and requirement of a sworn and signed statement**
Aye: Lilligren, Gordon, Samuels, Glidden, Hodges, Browne, Reid, Ginder, Weinbeck, Giles, Michels, Lubinski
Absent: Remington

**CRA Scope of Authority**
Aye: Lilligren, Gordon, Samuels, Glidden, Remington, Hodges, Browne, Reid, Ginder, Weinbeck, Giles, Michels, Lubinski
Absent: Patterson

**Disciplinary decision**
Aye: Gordon, Samuels, Glidden, Remington, Hodges, Browne, Reid, Weinbeck
Nay: Lilligren, Ginder, Giles, Michels, Lubinski
Absent: Patterson

## Appendix E: City Attorney opinions

**Minneapolis**
*City of Lakes*

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TO: Council Member Robert Lilligren, Vice President
Minneapolis City Council

FROM: Peter Ginder, Deputy Attorney, Civil Division

DATE: June 13, 2006

RE: Charter Duties of the Mayor Over the Police Department

**MEMORANDUM**

At the meeting of the Minneapolis Civilian Review Authority (CRA) Working Group on June 8, 2006, you asked for a copy of an opinion that you believe this Office issued in approximately 2003 regarding the Charter authority of the Mayor over the Police Department. I have checked and have not been able to locate any issued opinion on that topic from that timeframe. However, this memo will provide a summary of the authority of the Mayor over the Police Department.

The primary basis for the Mayor's control over the Police Department is found in Charter, Chapter 6. Section 1 of that chapter provides, in relevant part, as follows:

> **Section 1. Powers of Mayor over Police-Chief.** The mayor shall be vested with all the powers of said city connected with and incident to the establishment, maintenance, appointment, removal, discipline, control and supervision of its police force, subject to the limitations herein contained and the provisions of the civil service chapter of this Charter, and may make all needful rules and regulations for the efficiency and discipline, and promulgate and enforce general and special orders for the government of the same, and have the care and custody of all public property connected with the police department of the city. * * * The Mayor shall also appoint, subject to the provisions of the civil service chapter on this Charter, all members of the police force and other employees of the department prescribing the title, rank and duties of each, and report a list thereof to the city council, and the civil service commission. * * * Each and every person so appointed shall be subject to removal by the mayor when the mayor shall deem the same necessary after proper investigation in accordance with the civil service chapter of this Charter. The Mayor may also, in case of riot, large public gatherings or other unusual occasions demanding the same, appoint such number of temporary police as may be needed but not for a period of more than one (1) week, without the consent of the city council.

The charter duties are reflected in the Minneapolis Code of Ordinances, Section 171.20, which provides:

> **171.20. General duties of chief.** The chief of police, under the direction of the mayor, shall divide the subordinate police into proper watches and assign them their place of duty, and ascertain by personal daily inspections whether the police are faithfully discharging their duties, and report to the mayor any negligence or refusal to discharge the same, and also shall perform the other ordinary duties of a police officer. The chief of

> police shall have precedence over the police officers whenever engaged in the same service, and they shall at all times when on duty be subject to the chief's command and control. *(Emphasis added)*

Charter, Chapter 6, Section 3 also describes the power of the Mayor in regard to special police:

> The Mayor may at any time, at the request of any person, firm, society or organization, or several thereof, appoint special police officers or guards who shall serve without expense to the City and have police powers to preserve the peace and protect the property at such places and within such limits as may be designated in such appointment for the term therein mentioned, but such special police officers or guards shall not exercise any authority or wear any badge of office outside the limits so designated.

The Mayor's authority to appoint special police is also codified in M.C.O., § 171.90.

Charter, Chapter 6, Section 4 also provides as follows:

> **Section 4. Oath and Bond of Police Officers.** Before entering upon or exercising any official duty, each and every appointee under this chapter shall take, subscribe, and file in the office of the City Clerk an oath to support the constitution of the United States and of the State of Minnesota, and faithfully perform the duties of the office, under direction of the Mayor and Chief of Police . . . .

As I have indicated during discussion with the CRA Working Group, the City Council has the general authority of the "power of the purse" in regard to the Police Department. Charter, Chapter 6, Section 2 provides as follows:

> **Section 2. Buildings, Etc., Salaries and Bonds of Police Officers**. The city council shall provide all buildings, facilities and equipments, and all other public property as may be necessary or deemed essential to the efficiency of said police force and department, and shall, by resolution, fix the salary and compensation of each member of the force and provide for the payment thereof. The City Council shall also fix the amount of the bonds to be required from each officer and the conditions thereof, and pass upon the same, and when so requested by the Mayor, shall determine the maximum number of members to constitute said Police Force . . . .

In addition, city ordinance provides that the Police Department consists of "as many additional police officers as the city council may, from time to time by resolution authorize". M.C.O., § 171.10. The council by ordinance may also revoke the Mayor's appointment of special police. M.C.O., § 171.100. The council also may require appointed police officers to file a bond with the City Clerk. Charter, Chapter 6, Section 4.

The City Council may determine how and by whom the director of the Community Services Bureau (Crime Prevention) within the police department shall be appointed. Charter, Chapter 6, Section 5. However, the duties of the Community Services Bureau are assigned by the Chief of Police. Id.

Minneapolis City Charter, Chapter 6 has been addressed by the Minnesota Supreme Court on one occasion. The Supreme Court stated:

> That charter places in the hands of the mayor of the city complete supervision over the police department. He is vested with authority and power to remove a policeman from duty and to reinstate him, and the term of removal may be long or short. He has authority to define the duties of such officers, and, incident to his general powers, may take such steps as may be necessary to improve the service by proper discipline of the men, and such discipline may reasonably require complete removal, temporary removal and reinstatement, or suspension for a temporary purpose with or without pay.

Rees v. City of Minneapolis, 117 N.W. 432, 433 (Minn. 1908).

The summary memorandum was intended to identify the main sources of authority for the Mayor over the Police Department. I have not discussed, for example, the appointment or removal authority of the Chief of Police, which involves the Mayor, the Executive Committee, and the City Council.

Please let me know if you have additional questions.

PWG:kc/ 06-09503

**Minneapolis**
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TO: Council Member Betsy Hodges

CC: Civilian Review Authority Task Force

FROM: Peter W. Ginder, Deputy City Attorney

DATE: July 7, 2006

RE: Proposed Amendment to M.C.O. § 172.130

**INTEROFFICE MEMORANDUM**

---

At the June 29, 2006, meeting of the Civilian Review Authority (CRA) Task Force, the task force moved forward a proposed amendment to M.C.O. § 172.130. For convenience, the proposed amendment follows:

> Recommend to the City Council the following additions and changes to the CRA Ordinance:
>
> **172.130 Disciplinary Decision**. (a) Upon conclusion of the hearing and request for reconsideration process, the review authority shall forward the investigatory file, the findings of fact and the panel determination to the chief of police, who shall make a disciplinary decision based upon this information. A disciplinary decision is the issuance of a verbal warning, written warning, suspension, or termination. The chief's disciplinary decision shall be based on the adjudicated facts as determined by the CRA Board, and shall not include a *de novo* review of the facts by the MPD's Internal Affairs Unit or any other police officer, unit, or division. Under this ordinance, a sustained CRA complaint shall be deemed just cause for disciplinary action by the chief of police or the mayor of Minneapolis.
>
> In cases where the CRA Board has determined that specific facts constitute a violation of the MPD Policy and Procedure manual, under no circumstances should the MPD Internal Affairs Unit or any other police officer, unit, or division be allowed to alter, augment, or revise the designation.
>
> In all cases where the review authority sustained the complaint, the chief of police shall provide the review authority and the mayor with a written explanation of the reason(s) for that disciplinary decision.

As I indicated during the discussion at the June 29th meeting, I believe the proposed amendment may violate the City Charter. My June 13, 2006, memorandum to Council Member Lilligren, quoted City Charter, Chapter 6, § 1, which provides that the "mayor shall be vested with all the powers of said city connected with and incident to the establishment, maintenance, appointment, removal, discipline, control and supervision of its police force . . . " The Minnesota Supreme Court, in addressing this charter provision, stated that the "charter places in the hands of the mayor of the City complete supervision over the police department." Rees v. City of Minneapolis, 177 N.W. 432, 433 (Minn. 1908).

In your email of June 30, 2006, you stated that you hoped to work with members of the CRA Task Force to craft potential amendments that address specifically the chief's discretionary powers to discipline CRA sustained cases. As members of the Task Force consider potential amendments in this area, it is useful to review the many years of discussion that has gone on in this area. It is my intention that the historical background from prior CRA task force and committee reports will provide a legal framework for discussing proposed amendments in this area.

In 1989, the Minneapolis City Council established a Civilian Review Board Working Committee to investigate and make recommendations regarding the City's implementation of a Civilian Review Authority. At the same time, the City Council established a Technical Advisory Committee "to aid the Civil Review Board Working Committee in its efforts". That Technical Advisory Committee consisted of members of Police Administration, Human Resources, Affirmative Action, Civil Rights, City Attorney and County Attorney's departments, as well as members of the private bar. On July 27, 1989, Mark Wernick, Chair of the Technical Advisory Committee (a private attorney, now Judge in Hennepin County District Court), issued a report to the Civilian Review Board Working Committee. In his memorandum, Mr. Wernick discussed issues regarding disciplinary authority issues between the Civilian Review Authority and the Chief of Police:

> Our committee must consider the City Charter with respect to the issue of whether the Civilian Review Board can have disciplinary authority. Under the Charter, the mayor has that authority subject to the provisions of the civil service chapter (and subject to the provisions of the Public Employment Labor Relations Act). In practice, the mayor has delegated that authority to the Chief of Police. If a Civilian Review Board were to have disciplinary authority, then the City Charter would have to be amended pursuant to Minn. Stat. §410.12 or a special law would have to be enacted pursuant to Minn. Stat. §645.021. If a Civilian Review Board were to have authority to recommend discipline to the mayor or Chief of Police, then no City Charter amendment or special law would be necessary to grant a Civilian Review Board that authority. See, Harrington v. Tate, 254 A.2d 622 (Pa. 1969).

As the City Council considered the implementation of the first iteration of the Civilian Review Authority, Council Member Walter Dziedzic raised concerns that the proposed Civilian Review Authority invaded the power and authority of the Mayor contained in City Charter, Chapter 6, § 1. On February 1, 1990, the City Attorney's Office, in an opinion authored by Floyd B. Olson, Deputy City Attorney, opined that the proposed ordinance was not in conflict with the Charter. That opinion stated:

> My conclusion is that the ordinance passed by the Council is not on its face in conflict with the quoted portions of the Charter. The Civilian Review Board has not been vested with, nor has the Mayor been divested of, power "connected with and incident to the establishment, maintenance, appointment, removal, discipline, control and supervision

> of its police force . . . ." Three aspects of the ordinance should be examined in support of this conclusion. First, in connection with the investigative aspect, nothing in the ordinance precludes a simultaneous investigation of an incident by the Police Chief. Second, if the Chief of Police determines that the record developed by the Civilian Review Board is, for some reason, incomplete or that other evidence is or has become available bearing on the complaint, the ordinance does not prevent additional facts from being considered along with consideration of the information submitted by the Civilian Review Authority. I do not read the ordinance to mean that the power of the Chief of Police to investigate complaints and discipline police officers has been preempted. While Section 172.130 requires the Chief of Police to consider and weigh the Civilian Review Authority's findings and determination, both the Chief and the Mayor may perform their own investigation and reach their own conclusions about the relevance and significance of the findings and determinations of the Civilian Review Board. The third aspect of the ordinance relates to discipline. You should note that both the decision to impose discipline and the nature of the discipline are not vested in the Civilian Review Board.
>
> My interpretation of Chapter 172 is that it creates an independent City review authority whose findings and conclusions are to be used in assisting the Mayor and Chief of Police in exercising the power vested in them by Chapter 6 of the City Charter. Nothing in the City Charter prohibits the City Council from requiring City officials and employees to participate in a process designed to aid the Mayor and the Chief of Police in fulfilling their Charter responsibilities.

The CAO addressed this question again on March 19, 1993, in response to a question from the Commander of the Professional Standards Division of the Police Department. In that opinion, Assistant City Attorney James A. Moore stated:

> It is our opinion that the Chief of Police is not obligated to discipline a police officer on an allegation that has been "sustained" by the CPRA. This conclusion is based upon Chapter 6, Section 1 of the Minneapolis City Charter . . . . Nothing in Chapter 172 of the Minneapolis Code of Ordinances divests the Mayor; and the Mayor's designee, the Chief of Police, of the Mayor's inherent authority under the City Charter." . . . Because the CPRA has only the authority to make recommendations, the Chief is not compelled to follow those recommendations.

In 1997, the Minneapolis City Council asked for a report on the workings of the Civilian Police Review Authority. In November 1997, the Minneapolis Civilian Police Review Authority Redesign Team, chaired by City Coordinator, Kathleen O'Brien, issued that report. The report discussed the policy reasons for the Chief of Police retaining disciplinary control of police officers:

> D. The Role of Police Chief
>
> When the CRA was created in 1990, there was much discussion and disagreement about the police chief's role in disciplining officers. Ultimately it was agreed that the CRA would handle investigation and evidentiary hearings and that the police chief would retain control of disciplining officers.

During the Redesign Team's review this year, little disagreement surfaced over the chief's role in discipline. Current Minneapolis Police Chief Robert Olson, and former Chief John Laux, both spoke to the importance of the [sic] retaining authority over the discipline dispensed in CRA police misconduct cases. Focus groups participants and national experts agreed with their view.

While the City Attorney has determined that the police chief cannot overturn CRA findings, the chief retains managerial authority to determine the level of discipline imposed, in [sic] any. As a result, some concern was raised in focus groups and in Redesign Team discussion that even though the chief may disagree with a Board decision, light discipline (for example, a letter of reprimand) is imposed in order to avoid a confrontation with the Board.

While some may question the wisdom of letting the Police Chief have the final say in discipline, ultimately his reappointment depends on satisfaction with his performance with includes how he handles sustained CRA complaints.

*Recommendations:*

a. The disciplinary authority of the police chief should continue to be supported.

b. The police chief should document and communicate his reasons for not disciplining an officer when a complaint is sustained by the CRA. If the Chief's own investigation leads him to believe the CRA was wrong in sustaining a complaint, he should state his difference of opinion with the CRA board, determine the discipline he feels is appropriate, and carefully document the reasons for his actions.

   This is not unlike what judges do when they document departure from sentencing guidelines. Honesty and careful documentation will keep lines of communication open, enhance public and police understanding and ultimately strengthen the CRA's credibility. It will also protect the interests of the City in any subsequent forum where disciplinary actions are examined.

As you are aware, in 2003 the City revised the Civilian Review Authority. Prior to that restructuring, the City created another Civilian Review Authority Redesign Committee. That Committee also had a legal subcommittee. The Redesign Action Group Recommendations dated July 22, 2002, prepared by the City Coordinator's Office and Finance Department, included recommendations from the legal subcommittee. The recommendations of the legal subcommittee again discussed disciplinary authority for civilian review agencies:

**III. Disciplinary Authority.**

One alternate proposed is that the COA have the authority to impose discipline and that discipline imposed by the COA should be final. There are numerous legal impediments to this proposal.

The Minneapolis City Charter vests in the Mayor the sole authority to appoint, remove, discipline and control Minneapolis Police Officers. City Charter, Ch. 6, § 1. City Ord. §

171.20 vests the Police Chief with the same authority under the direction (and discretion) of the Mayor. By ordinance, the Mayor's disciplinary authority has been delegated to the Chief of Police. Thus, a COA could not have the authority to impose discipline unless the City Charter was amended. The finality of discipline is governed by a number of authorities.

*A. Public Employment Labor Relations Act.*

The Public Employment Labor Relations Act ("PELRA") is codified at Minn. Ch. 179A and governs labor relations for all employees of the State of Minnesota and its political subdivisions. One of the requirements of PELRA is that public employers meet and negotiate with public employee representatives over "terms and conditions of employment." A term and condition of employment may not be unilaterally imposed by a Minnesota public employer. One such term and condition of employment is discipline and a process to resolve disputes over discipline. Thus, certain aspects of the proposal, such as the creation of a "point system," cannot be imposed by the City and, therefore, could be implemented only upon agreement of the Police Federation.

Further, PELRA requires that *all* collective bargaining agreements must contain a grievance procedure which includes a right to submit to arbitration before a neutral arbitrator all disciplinary sanctions. Minn. Stat. § 179A.20, subd. 4. Therefore, the statutory right to submit disciplinary sanctions to arbitration precludes either the Police Chief or a COA from imposing final and binding discipline and such statutory right cannot be superseded or circumvented unless PELRA is amended.

*B. Civil Service Rules.*

The Minneapolis Civil Service Rules provide that discipline must be corrective, not punitive, and must be progressive. MCSR 11.01. The Rules further provide that all classified employees (all Minneapolis Police Officers up to the rank of Captain are classified) are entitled to appeal suspensions over 30 days; permanent demotions and discharges to the Civil Service Commission. MCSR 11.06. The Civil Service Commission hears the case *de novo*, meaning that the decision of a COA or the City is given no precedence. Thus, Civil Service Rule 11 also poses an impediment to allowing either the Police Chief or a COA to impose final discipline.

*C. Veteran's Preference Act.*

The Minnesota Veteran's Preference Act, codified at Minn. Stat. § 197.46, provides that all public employees who are honorably discharged veterans are entitled to a hearing before a veteran's preference board; (in Minneapolis the Civil Service Commission sits as the veteran's preference board) before they can be discharged, permanently demoted or placed on indefinite leave. Veterans continue to be paid during the pendency of their appeal. The Veteran's Preference Board hearing, like that of the Civil Service Commission, is *de novo*. Therefore, the Veteran's Preference Act would also have to be amended in order to allow the Police Chief or a COA to impose final discipline against a veteran.

As the various legal subcommittees have stated during the years, City Charter, Ch. 6, § 1, prohibits the CRA from having authority to impose discipline. Therefore the language in the first proposed sentence, "[a] disciplinary decision is the issuance of a verbal warning, written warning, suspension, or termination" in conjunction with the first sentence of M.C.O. § 172.130, would violate the Charter since it would result in the CRA imposing "discipline".

I believe the second proposed sentence, "[t]he chief's disciplinary decision shall be based on the adjudicated facts as determined by the CRA Board, and shall not include a *de novo* review of the facts by the MPD's Internal Affairs Unit or any other police officer, unit, or division" may be acceptable under the Charter. This language only prohibits a "*de novo*" review of the facts by the various police divisions. *De novo* means "anew". Black's Law Dictionary (8th Ed. 2004). In other words, the proposed language prohibits Police Department divisions from looking at the facts from a complete fresh start. Nothing in that proposed language prohibits the Chief from conducting further investigation if he or she believes that the record provided by the Civilian Review Board is, for some reason, incomplete or if he or she believes that other evidence is or may become available and is relevant to the complaint. This interpretation also may satisfy the concerns raised in the opinion issued by Deputy City Attorney Floyd Olson.

I am not sure of the intent of the sentence "[u]nder this ordinance, a sustained CRA complaint shall be deemed just cause for disciplinary action by the Chief of Police or the Mayor of Minneapolis." If the intent of that sentence is merely to provide the Chief or the Mayor a basis to take action, I believe it may be permitted under the charter so long as it does not require the Chief or the Mayor to impose discipline. If the intent is to remove any discretion by the Chief or the Mayor in deciding whether to issue discipline, then it will run afoul of Charter, Ch. 6, § 1. If the intent of that language is to limit the ability of an arbitrator or the Civil Service Commission from considering whether just cause exists, that language will be ineffective. As noted in the 2002 Redesign Action Group Recommendations, the Minneapolis Civil Service Commission hears cases *de novo*, meaning that the decision of the CRA will be given no precedence. See, generally, Charter, Ch. 19, § 7. In addition, the term "just cause" is not defined in the current collective bargaining agreement between the City and the Police Federation. The definition of "just cause" would be a "term and condition of employment" which cannot be unilaterally imposed by ordinance by a public employer. The employer and the bargaining unit must bargain over that language. In those cases where the term "just cause" is not defined in the collective bargaining agreement, the arbitrator in a grievance proceeding is free to adopt a reasonable definition and to craft any remedy that does not conflict with the terms of the agreement. City of Minneapolis v. Police Officer's Federation of Minneapolis, 566 N.W. 2d 83, 87 (Minn. App. 1997). Stated differently, an arbitrator is final judge of both law and fact, including interpretation of the terms of a contract. Id. at 86.

The final proposed amendment to M.C.O. § 172.130 prevents the MPD from altering or revising the CRA Board designation. I am not aware, at this time, of a legal prohibition against the proposed language.

Please contact me if you have any questions in this area.

PWG:kc/06 memos.Hodges.06.07.06

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TO: Council Member Robert Lilligren

FROM: Peter W. Ginder, Deputy City Attorney

DATE: July 28, 2006

RE: Subpoena Power of Civilian Review Authority

**INTEROFFICE MEMORANDUM**

---

At the meeting of the task force this week, I indicated that I would provide members with copies of prior documents opining on the Civilian Review Authority's power to issue subpoenas. On July 11, 2002, members of the legal subcommittee issued a memorandum to the Civilian Review Authority Redesign Committee which discussed a number of issues. Specifically, the memorandum covered the subpoena power issue:

> The current CRA ordinance, Mpls. Ord. § 172.110, provides that subpoena power via application by the CRA chair to the District Court becomes effective upon charter or legislative authorization. This language in the ordinance is derived from Minnesota court rulings that a municipality has no authority to grant itself subpoena power and that only the state legislature can grant, and expand, local government subpoena power. *See, State ex rel. Peers v. Fitzgerald,* 131 Minn. 116, 154 N.W. 750 (1915); *City of Minneapolis Commission on Civil Rights v. University of Minnesota*, 356 N.W.2d 841 (Minn. Ct. App. 1984). The majority of the Legal Subcommittee believes that the ruling in these cases requires that subpoena power be granted by the Legislature or by a Charter amendment. A minority view is that subpoena power can be granted merely by amending the ordinance to delete the sentence requiring that approval through legislation or charter amendment be obtained. (Footnotes omitted)

In addition, our office has also opined on this issue. Attached is a copy of a January 8, 2002, memorandum from Larry Cooperman, Assistant City Attorney, to former Council Member Paul Zerby.

cc: Civilian Review Authority Task Force

Enclosure

PWG:hhp/2006memos/7.28.06 CM Lilligren

TO: Council Member Paul Zerby

FROM: Larry F. Cooperman, Assistant City Attorney

DATE: January 8, 2002

RE: Civilian Review Authority Subpoena Power

**MEMORANDUM**

---

This memorandum is in response to your inquiry regarding whether the Civilian Police Review Authority (CRA) has power to issue subpoenas in the course of its investigations and, if not, whether the City Council can by ordinance delegate such authority to the CRA.

## 1. AUTHORITY OF THE CRA

The Civilian Review Authority was established by Minneapolis Code of Ordinances, Chapter 172, for the purpose of investigating allegations of misconduct on the part of Minneapolis police officers and making findings of fact and conclusions based on such findings of fact. MCO §172.10. The CRA meets once each month to conduct evidentiary hearings or other business related to its operations. MCO §172.50. If the CRA sustains a complaint, its findings are then forwarded to the Chief of Police for use as a basis for discipline.

With respect to the subpoena powers of the CRA, MCO §172.110 provides as follows:

> The chairperson of the review authority may compel the presence of witnesses and/or documents at evidentiary hearings by applying to the Hennepin County District Court for subpoenas. The chairperson may also apply to the district court to punish a person who disobeys a subpoena obtained at the chairperson's request, in like manner as a contempt proceeding is initiated in Minnesota District Courts. This section shall become effective after charter or legislature authorization.

Section 172.110 has not gone into effect, because there has been no legislative or City Charter enactment to give it effect. As the ordinance is presently written, there must be an act of the state legislature or a city charter amendment in order to confer subpoena power upon the chair of the CRA.

## 2. DOES THE CITY COUNCIL HAVE POWER TO ENACT AN ORDINANCE GIVING THE CRA SUBPOENA POWERS?

Because MCO §172.110 has not been made effective by statutory or charter amendment a question arises as to whether the City Council may simply amend Section 172.110 or repeal it and enact a new

ordinance so as to confer upon the CRA the authority to issue subpoenas. The question is whether the City Council has subpoena powers and whether it may delegate such powers to an administrative agency which the Council has created.

The general rule relating to the power of a municipal corporation as stated in Borgelt v. City of Minneapolis, 135 N.W.2d 438, 440 (Minn. 1949) is as follows:

> . . . a municipal corporation has only such powers as are expressly conferred upon it by statute or its charter, or necessarily implied. It has no inherent power [citation omitted].

The Borgelt court further expounded as follows:

> As to the extent of the implied powers of a city or municipal corporation, . . . the trend is toward a less restrictive rule than we followed in our early cases, and the tendency now is to uphold the power that is a necessary aid to a specific grant in the statute or charter. 135 N.W.2d at 441.

Despite the more liberal tendency in construing the scope of the powers granted by statute or charter, the power being questioned must be based upon some express, specific power granted to a municipal corporation by the Legislature or by the home rule charter. As stated in 2A McQuillan § 10.12 p. 338 (3rd Ed. 1996), "There can be no implied powers independent of express powers . . . ."

Turning next to the specific issue at hand, there appears to be no specific or express statutory or charter authority for the creation of a civilian police review board or similar body. There was a statute passed in 1998 which authorizes the City Council to indicate by ordinance the manner in which the Executive Director of the CRA is to be appointed. (Minn. Laws of 1998, Chapter 393); however, that statute was passed eight years after the ordinance establishing the CRA. There is no specific reference in the City Charter to a civilian police review authority.

The City Charter, Chapter 6, Section 1, authorizes the Mayor to remove police officers after proper investigation in accordance with Civil Service Rules and provides that the Mayor shall be vested with the power to discipline, control and supervise police officers. MCO § 171.20 provides that the Chief of Police, under the Mayor's direction, shall ascertain whether the police are faithfully discharging their duties and further provides that the police officers are under the Chief's command and control.

The CRA's function is to determine by investigation whether allegations of police misconduct are true and report findings of misconduct to the Chief for discipline. In my opinion, the City Council's power to authorize the CRA to perform this function is implied under the express powers in the City Charter to maintain a police force, to determine whether the police are faithfully discharging their duties, and to discipline such officers for misconduct. However, the question remains whether the power to subpoena witnesses is necessarily implied from these powers. I believe it is not.

The authority to establish the CRA is itself implied from the power to discipline officers and investigate misconduct. Those powers, however, are conferred by the Charter on the Mayor and the Police

Chief. Unless, pursuant to the City Charter, the Mayor or the Police Chief could be given the power to subpoena witnesses for the purpose of conducting internal investigations, the CRA could not be given that power, because the CRA's power is only an adjunct to the power of the Mayor and the Chief.

Significantly, the City Charter, Chapter 4, Section 4, in providing that the City Council, in exercising its power to remove from office ". . . any officer of said city whether appointed by the City Council or elected by the people . . ." and to try such officers, also provides that "the City Council . . . shall have the power to compel the attendance of witnesses, and the production of papers, and to hear and determine the case . . . ." This section expressly applies to officers appointed by the City Council and therefore does not apply to those officers appointed by the Mayor or the Chief of Police, namely the officers of the Minneapolis Police Department. Also, in Chapter 19, Section 19, the Charter authorizes the Civil Service Commissioners to subpoena witnesses. The familiar maxim "Expressio unius est exclusio alterius," i.e., the expression of one thing is the exclusion of another, is applicable. In Dunnell's Minn. Dig. § 508 (i) Statutes, p. 196, the following is stated:

> Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others . . . .

Therefore, the City Charter grant to the City Council and the Civil Service Commission of the subpoena power as to officers appointed by the Council or employees in the classified service implies that the power of subpoena was withheld with respect to other officers, boards or commissions.

Further support for the proposition that the power to subpoena witnesses has been withheld is the language in Appeal Board of Dept. of Enviro. Control of Chicago v. U.S. Steel Corp., 48 Ill.2d 575, 272 N.E.2d 46 as follows:

> . . .[T]he contention is advanced that authority to issue subpoenas and to institute proceedings for their judicial enforcement is necessarily implied from that provision, read in conjunction with the section of the same act which grants municipalities the general police powers.
>
> But, the power to issue administrative subpoenas is an extraordinary one which is not to be implied from a simple grant of authority to enact ordinances. This is demonstrated by the fact that when the General Assembly intended municipal agencies to have the power to issue subpoenas in connection with the enforcement of particular statutes or ordinances, it has so stated.

48 Ill.2d at 578, 272 N.E.2d at 48.

In Barry v. Garcia, 573 So.2d 932 (Fla. 1991), the Florida District Court of Appeals held that the City Commission of the City of Miami could not delegate its authority to issue subpoenas to a panel charged with the duty to investigate community relations between police officers and residents. The court stated as follows:

> . . . [T]he express enumeration of powers conferred on municipalities is an exclusion of all other powers not expressly delegated to them and which are not necessarily implied in those expressly delegated.
>
> . . .
>
> . . .[T]here must be a clear authority to either issue a subpoena by municipal officials in the first instance or for them to delegate this power to nonelected persons. If the city opts to change the manner in which subpoena power is to be exercised, including the power to delegate same to a citizen board . . . then such change must be accomplished in accordance with the provisions of the Charter and the Municipal Home Rule Powers Act; i.e., by a referendum of the electors of the city.

573 So.2d at 937-938.

In Wiley v. Shanahan, 185 N.W.2d 523 (Minn. 1971), Wiley filed a complaint with the Minneapolis Comm'n on Human Relations and obtained a subpoena from the District Court commanding the respondent police officer to appear before a hearing panel of the Commission. The Supreme Court refused to quash the subpoena in response to the contention that the proceeding was criminal in nature and that the respondent's right against self-incrimination would be violated by appearing before the hearing panel. This case does not in my opinion hold that the hearing panel had the right to subpoena witnesses, because the only issue decided by the Court was whether the subpoena was sought in connection with a criminal case in which the respondent could invoke his right against self-incrimination without taking the stand. Therefore, the Court did not actually rule on the right of the Commission to subpoena witnesses.

## CONCLUSION

Based upon the authorities reviewed, it is my opinion that the City Council may not by ordinance confer subpoena powers upon the CRA. The Council could be authorized to do so by passage of a new state statute or charter amendment.

LFC:hhp
cc: Council Members
Jay Heffern, City Attorney

LFC:clr/01A-01391/CM Paul Zerby 1.8.02

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TO: Council Member Robert Lilligren

FROM: Peter W. Ginder, Deputy City Attorney

DATE: August 14, 2006

RE: Subpoena Power of Civilian Review Authority and Civil Rights Department

**INTEROFFICE MEMORANDUM**

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At the last meeting of the CRA task force on August 3, 2006, members asked for further discussion regarding whether the subpoena power recently granted to the Director of the Department Civil Rights could be exercised on behalf of the Civilian Review Authority. I have reviewed the law in this area, including the special law granting subpoena power to the Minneapolis Commission on Civil Rights and the Minneapolis Department of Civil Rights and I do not believe there is authority for the Director to issue investigative subpoenas for the CRA.

**DISCUSSION**

In my July 28, 2006, memorandum regarding the subpoena power of the Civilian Review Authority, I quoted from the report of the legal subcommittee of the 2002 Civilian Review Authority Redesign Committee. That report opined that in order for the CRA to have subpoena power, it must be granted by the legislature or by a charter amendment. I also attached a memorandum from Larry Cooperman, Assistant City Attorney, dated January 8, 2002. Mr. Cooperman also opined that the City Council could not confer subpoena powers upon the CRA by ordinance. Mr. Cooperman also opined that subpoena power could be granted to the CRA either by passage of a new state statute or by amendment to the charter. During the August 3, 2006, meeting, reference was made to a memorandum of Susan Trammell, Assistant City Attorney, dated March 31, 2005, which discussed the extent of the subpoena power granted to the Department of Civil Rights by the legislature. As are aware, in June 2006, the City Council amended the code of ordinances to allow the Director of the Department of Civil Rights to issue subpoenas for investigative purposes. The general legal background discussed in those memoranda is applicable here.

The authority of the MCCR, the MDCR or the Director to issue subpoenas is based upon state law. As noted in the memoranda of Ms. Trammell and Mr. Cooperman, the general rule relating to the power of a municipal corporation is defined in Borgelt v. City of Minneapolis, 135 N.W.2d 438, 440 (Minn. 1949) as follows:

> … A municipal corporation has only such powers as are expressly conferred upon it by statute or its charter, or necessarily implied. It has no inherent power [citation omitted].

The Borgelt court further stated:

> As to the extent of the implied powers of a city or a municipal corporation, … the trend is toward a less restricted rule than we followed in our early cases, and the tendency now is to uphold the power that is a necessary aid to a specific grant in the statute or charter.

135 N.W.2d at 441.

**Legislative Grant of Authority**

The use or grant of the subpoena power by the Civil Rights Commission or its predecessor agencies has its own complicated history. In the 1960s, the City of Minneapolis had an agency called the Minneapolis Fair Employment Practices Commission which regulated in the field of civil rights. In 1967, the legislature, by special law, specifically granted subpoena power to this commission by name. Later in 1967, the Minneapolis City Council abolished the Minneapolis Fair Employment Practices Commission and purported to transfer to the newly created Minneapolis Commission on Human Relations, any powers previously granted by law to the Fair Employment Practices Commission. In an opinion issued by the City Attorney's Office on July 22, 1974, the office opined that because the subpoena power had been specifically granted to the Fair Employment Commission, it did not transfer over to the newly established Commission on Human Relations even though it had similar powers and duties.

In 1975, the legislature enacted a specific statutory grant of authority to City of Minneapolis civil rights or human rights agencies to issue subpoenas. Laws of Minnesota, 1975, Chapter 82 provides in relevant part:

> Section 1. **Minneapolis, City of; Powers and Duties Relating to Civil Rights and Human Relations.** In addition to all other powers conferred by statute or charter, the city council of the city of Minneapolis may, by ordinance, grant to any Minneapolis human rights, human relations, or civil rights commission, department, or director, any and all powers and duties which are granted by Minnesota Statutes 1974, Chapter 363 to any state human rights, human relations, or civil rights commissioner, department, or state board.

The grant of authority contained in Chapter 82 is specifically made to a "human rights, human relations, or civil rights commission, department, or director" to exercise those powers granted to any state human rights, human relations, civil rights commissioner, department or board under Minnesota Statutes 1974, Chapter 363. The rules of statutory construction require that words and phrases in a statute are to be construed according to their common and approved usage unless doing so would involve a construction inconsistent with manifest legislative intent. Welscher v. Myher, 42 N.W.2d 311 (Minn. 1950). A court must give a plain reading to any statute it construes and when the language of the statute is clear, the court does not engage in further construction. Goman v. Northland Family Physicians, Ltd., 645 N.W.2d 413 (Minn. 2002). The grant of power in this special law is only to the agencies denominated in section 1, i.e., the MCCR, the MDCR and its director, and only for the powers and duties which are granted to the City's state counterparts. There is no subpoena authority granted to a police civilian review authority. The MDCR Director's authority, by special law, is limited to the authority granted to the Commissioner under Chapter 363.

**Commissioner's Duties**

The Commissioner's power and duties are to be used to carry out the terms and provisions of Chapter 363. Minn. Stat. §§ 363.04, subd. 5, 363.05, subd. 1 (1974). Minn. Stat. § 363.05, subd. 1 (1974) granted the following specified duties to the Commissioner of the Department of Human Rights:

> (9) Issue complaints, received (sic) and investigate charges alleging unfair discriminatory practice, and determine whether or not probable cause exists for hearing;
>
> (10) Subpoena witnesses, administer oaths, take testimony, and require the production for examination of any books or papers relative to any matter under investigation or in question; authorize hearing examiners to exercise the authority conferred by this clause;

The Chapter also provided for the enforcement of a subpoena in § 363.05, subd. 2:

> **Enforcement of subpoena.** Disobedience of a subpoena issued by the commissioner pursuant to subd. 1 shall be punishable in like manner as a contempt of the district court and proceedings instituted upon application of the commissioner made to the district court of the county where the alleged unfair discriminatory practice in connection with the charge made by a charging party or a complaint filed by the commissioner has occurred or the respondent resides or has his principal place of business.

Under the 1974 Human Rights Act, any person aggrieved by a violation of Chapter 363 could file a "verified charge" with the commissioner setting out the details of the unfair discriminatory practice complained of. Minn. Stat. § 363.06, subd. 1 (1974). The word "verified" when used in a statute, ordinarily imports a verity attested by the sanctity of an oath. It is frequently used interchangeably with "sworn". An "unfair discriminatory practice" means any act described in § 363.03. The Commissioner, therefore, only had power to issue subpoenas for verified charges alleging a violation of Chapter 363.

**Creation of Minneapolis Civil Rights Agencies**

In 1975, the City Council "created a Minneapolis Commission on Civil Rights for the purpose of carrying forward the policies of the city in the field of human relations to promote civil rights and to enforce the provisions of this title." M.C.O. § 141.10. At the same time, the City Council enacted Chapter 139, which covers civil rights generally, states the policy and purpose of the civil rights ordinance, provides definitions, and prohibits discriminatory acts. Together, Chapters 139, 141 and 142 comprise Title 7 "Civil Rights" of the Code of Ordinances. Based upon, and consistent with, the 1975 special law, the Council granted power to the Commission to apply to the district court for subpoenas:

> *Subpoenas.* The chairperson of the commission, a hearing examiner or a hearing committee may, at the request of any party, apply to the district courts for subpoenas to require witnesses to appear at any regularly scheduled public hearing before a hearing committee to give testimony and to bring with them for examination any books, papers or documents relative to any verified complaint which is the subject matter of a public hearing. The chairperson of the commission

> may apply to the district court to punish a person who disobeys a subpoena obtained at the chairperson's request in like manner as a contempt proceeding is initiated in the district courts of this state.

M.C.O. § 141.50(l). In 1975, the City Council also created a Department of Civil Rights under the direction of and responsible to the Mayor. M.C.O. § 141.80(a). As amended in 2003, the Civil Rights Department provides all administrative services for the Civil Rights Commission and the Minneapolis Police Civilian Review Authority. M.C.O. § 141.80(b). As further amended in 2006, the Director has certain powers and duties including the power to issue investigative subpoenas:

> (1) *Complaints:* Receive verified complaints alleging discrimination from persons who believe discrimination has occurred.
> (2) *Investigation:* Make such investigation as the director may deem appropriate to determine whether there is reason to believe that the allegations of discrimination are well founded.
> (4) *Referral:* When deemed necessary, refer a complaint to the commission.
> (5) *Subpoenas:* Subpoena witnesses and require the production for examination of any books, papers or documents relative to any verified charge under investigation or in question as the director deems appropriate to carry out the purposes of this title.
> (6) *Enforcement of a subpoena:*
>
> a. Apply to the district court to punish a person who disobeys a subpoena issued by the director in like manner as a contempt proceeding is initiated in the district courts of this state.

M.C.O. § 140.80(c).

The Director's authority, which is reflected in the ordinance, parallels that of the Commissioner of Human Rights. The Director may only issue subpoenas for verified charges alleging discriminatory practices under the civil rights ordinance.

**CRA Authority**

In 2003, the City Council created the current version of the Civilian Police Review Authority "for the purpose of investigating allegations of misconduct on the part of officers of the Minneapolis Police Department and making findings of fact and conclusions based upon those findings of fact." M.C.O. § 170.10. The CRA, like the MCCR is an independent board or agency. M.C.O. § 172.20 defines the scope of authority of the CRA:

> **172.20. Scope of authority.** The review authority shall receive complaints that allege misconduct by an individual police officer or officers, including, but not limited to, the following:
>
> (a) Use of excessive force.
> (b) Inappropriate language or attitude.

(c) Harassment.
(d) Discrimination in the provision of police services or other discriminatory conduct on the basis of race color, creed, religion, ancestry, national origin, sex, disability or age or sexual orientation.
(e) Theft.
(f) Failure to provide adequate or timely police protection.
(g) Retaliation for filing a complaint with the review authority.

See also, M.C.O. § 172.60 (powers and duties of authority is to receive complaints alleging misconduct on the part of the Minneapolis police officer and conduct such investigations and inquiries as may be reasonably necessary). Although the CRA has authority to investigate alleged discrimination by police officers, it is an independent board which does not enforce the City's civil rights ordinance under Title 7.

The CRA ordinance also does not require a person filing a complaint to file a verified charge. M.C.O. § 172.70 states that "[a]ny person who has personal knowledge of alleged misconduct on the part of the Minneapolis police officer may file a complaint with the review authority by submitting said complaint at locations to be determined by the review authority.

The CRA ordinances requires the Minneapolis Department of Civil Rights to provide support staff including a manager and a community outreach advocate and other positions as necessary. M.C.O. § 172.170. The manager administers the day-to-day operation of the review authority and reports to the Director of the Department of Civil Rights. The ordinance creates a firewall between Civil Rights staff and Civil Rights investigation files:

> (d) Firewall. Department of civil rights staff with access to review authority files shall not have access to civil rights investigation files. Department of civil rights staff with access to civil rights investigation files shall not have access to the review authority files. Information from civil rights investigations shall not be shared with staff assigned to the review authority. Information from review authority investigations shall be shared only with staff assigned to the review authority. The director of the department of civil rights shall have an administrative role with regards to the review authority. The director shall have access to review authority investigative files for administrative purposes consistent with establishing management goals and objectives, evaluating employee performance, providing case management support, and making budgetary decisions, but shall not participate in the decision-making process regarding individual complaint files.

M.C.O. § 172.170(d).

The CRA is a separate agency from the MCCR and MDCR. It is not a general human rights agency and does not enforce the City's civil rights ordinance. It also does not require verified charges. Therefore, the MDCR Director has no authority to issue subpoenas on its behalf.

**Policy Considerations**

As discussed in the body of this memorandum, the Director of the MDCR does not have the authority to issue investigative subpoenas on behalf of the CRA. The authority of the CRA to issue subpoenas may be enacted through amendment of the charter or through the passage of a special law. As the task force moves forward in this discussion about whether to amend the charter or to request authority from the legislature, a number of issues should be considered. First, as outlined in the memorandum of Mr. Cooperman, the CRA's power is only an adjunct to the power of the Mayor under the charter and the Chief of Police. Considering the broad authority of the Mayor to discipline police officers, it would be anomalous not to simultaneously give that power to the Mayor or the Chief of Police. In addition, if subpoena power is not to be granted to the Mayor or Chief, to whom should the power be granted? If one looks at the Civil Rights Commission as a parallel, that authority would be granted to either the chair of the CRA, or a hearing committee. The task force may also wish to consider whether the subpoena power should be granted to CRA staff or a member of a different department, such as the Director of Civil Rights. The task force should also consider whether subpoena power should be limited to certain areas of inquires, for example, accusations of discrimination or use of force. Alternatively, it could be for any violation of the Police Department Policies and Procedures Manual as the proposed amendment to the CRA ordinance contemplates.

cc: Members of the Civilian Review Authority Task Force

PWG:hhp/2006memos/8.10.06 CM Lilligren