November 29, 2022

Minneapolis City Council
City Hall, Room 307
350 South Fifth Street
Minneapolis, Minnesota 55415

Dear City Council Members:

We would have loved to give you more time to read this letter, but after two long months of requesting access to the proposed changes to City Ordinance 172 Police Conduct Oversight, the ordinance was finally published yesterday afternoon, about two hours before the third and final public forum on the Community Commission on Police Oversight. After reading this proposed ordinance, it is obvious why the City Attorney wanted to avoid public scrutiny of the language. Not only does the language not match what was presented at the two prior public forums but parts of it are fatally flawed.

Who Gets the Data—It Matters
172.20 (c) states that "Civil rights department personnel carrying out duties under this chapter shall have full, free, and unrestricted access, to the extent authorized by law, to all police department information in order to: (1) Facilitate research and study projects at the request of the community commission on police oversight. (2) Conduct special reviews and programmatic reviews regarding activities or operations of city law enforcement services." [emphasis ours]

During the public forum, the big selling point on the proposed change is that the CCPO would be responsible for crafting policy recommendations since they would be on the complaint panels and would see patterns in the complaints. However, additional information about police operations, policies and practices is necessary to form policy recommendations. The lack of access to this information hamstrung the PCOC. It appears that the city is prepared to create the same kind of roadblocks to information for the CCPO as they have with the PCOC.

Phony Firewall
172.30 (c) states “Firewall. Information gathered as part of a complaint investigation shall be shared only with appropriate staff assigned to the civil rights department, police department, city attorney’s office, and community commission on police oversight, unless otherwise authorized by law.” [emphasis ours].

There are two huge issues with the way this is written:

1) If the information gathered as part of a complaint investigation is only shared with the staff assigned to the CCPO, the commissioners will have a tough time holding their hearing panels. This ambiguous language must be changed.

2) The point of a firewall is to legally BLOCK access to information that might improperly influence conduct. Thus, the city attorney’s office must be the target of this firewall, as having access to complaint investigation data may influence decisions regarding the pursuit of charges as a means of protecting the city from liability.

Qualifications for CCPO are Wrong and Violate Ordinance 14.180
Proposed ordinance 172.60, paragraph (c) outlines qualifications for the CCPO. These include the requirement that potential commissioners pass an onerous background check “necessary to obtain access to
data from the U.S. Federal Bureau of Investigation’s criminal justice information system” despite the fact that it is the INVESTIGATORS and not the CCPO commissioners who would access that system. This requirement has the effect of preventing people who are the most likely to have had bad encounters with police from participating in the CCPO. Given what we know about racialized targeting of POCI by the MPD, this requirement flies in the face of the City’s oft-repeated equity goals.

Two other qualifications are highly problematic. First, while the proposed ordinance blocks current city employees from being CCPO commissioners, there is no such prohibition for people who are prior city employees. As a result, literally every spot on the CCPO could be filled with retired MPD police officers if the city council and mayor so chose.

Second, the residency requirement has been removed from the qualifications. Not only is this unwise but it allows for the potential violation of ordinance 14.180, which reads in part “Residency requirements and exemptions for the open appointments process: All appointments made under the open appointments process shall be made from persons who are residents of the City of Minneapolis.” So now not only would it be possible to fill all slots on the CCPO with retired cops, but they wouldn’t even need to live in the city. This diminishes community oversight of police even further.

Other Problematic Sections of 172.60

1) Section (e) states “Removal. Except as otherwise established by law or city charter, all members of the community commission on police oversight shall serve at the pleasure of the appointing authority.” In other words, as soon as any CCPO commissioners start getting too vociferous about matters the city would rather not address, they can be booted without cause or due process.

2) Section (h)(1) states that the mayor will designate the chair of the commission. This reverses the practice of the PCOC commissioners electing their own chair and gives the mayor too much power over the work of the commission. Every other city board and commission elects its own chair. Why should the CCPO be any different?

3) Section (h)(2) reduces the number of meetings with the public to four a year. It was suggested during the public forums that perhaps the commission chair would choose to hold special meetings but those meetings only require three days’ notice, meaning that the community would literally have to check the city calendar daily to try to discern whether there might be such a meeting. In addition, there is no requirement in the ordinance for a public comment section during the meetings. Even if there was, allowing the community to speak to the CCPO for a few minutes four times a year is completely inadequate as a means of ensuring community input into the accountability process.

4) Section (h)(2) also states “The commission shall operate according to bylaws and rules approved by the city council.” Why? No other board or commission has to have their rules approved by the city council. This is yet another way to ensure the CCPO has absolutely no independence from the city.

5) Section (h)(3) states: “Any formal action of the commission shall be by the affirmative vote of at least a majority of its quorum…” Clearly whoever wrote this wasn’t very good with math. A quorum is 50% plus one. The quorum for a 15-member board is 8. A majority of 8 is 5. Thus, an affirmative vote of 5 would be all that is needed to pass a formal action of the commission even if 10 other commissioners voted against it. Perhaps the wording should reflect that a formal action shall be by an affirmative vote of a majority of those in attendance at a meeting, since that assumes that the meeting could only occur if a quorum is present.

6) Section (h)(3) also states: “…and shall be restricted to matters within its duties as described in this Section 172.60(i).” In point of fact, Section 172.60(i) outlines the POWERS of the CCPO, not the duties. There is a difference.
Other Issues with the Ordinance AND THE PLAN

Proposed Ordinance Violates Court Order: As Chuck Turchick correctly pointed out, the ordinance as written violates the Stipulation and Order signed by Hennepin District Court Judge Karen Janisch on June 8, 2020. Section VI, #5 of the Order requires the city to "amend any city ordinances to fashion an appropriate remedy for the person filing the complaint if a determination on the OPCR's recommendation of merit is not made within the 30 calendar day time period." The existing ordinance was amended to include this remedy. The proposed ordinance drops that language completely.

Proposed Ordinance Eliminates Input into Police Chief Performance Review: The Civilian Review Authority was empowered to provide input into the performance review of the chief of police. This power was then carried forward to the Police Conduct Oversight Commission. This power is important as it gives a means for the community to inform the performance review with input from beyond the walls of city hall and adds a layer of accountability of the chief to the community. The proposed ordinance has stripped away this tiny amount of input from the commission. It should be restored.

Proposed Ordinance Won’t Fix What’s Actually Broken: Finally, and most important of all—this proposed ordinance change does not address anything about the underlying Office of Police Conduct Review structure. That structure is controlled at all levels by city staff and police. As a result, few complaints by community members are sustained and less than 1% actually result in discipline.

The ONLY thing that will change is that the hearing panel pool will include more people and those same people will hold occasional meetings the community can attend. The current process that leads to an extremely small percentage of sustained complaints will remain the same.

This Proposed Ordinance is Not Ready for Primetime

This last-minute release of the ordinance language means the community has not had adequate time to analyze the language and its impacts on the vitally important function of police oversight. Even the City Council didn’t have access to the ordinance wording until yesterday. A PowerPoint presentation on the broad contours of the proposal is simply not adequate for the community to understand the nuts and bolts of the proposed ordinance change. As always, the devil is in the details and there are far too many devils in these details.

The city council and mayor violated a city ordinance to deliberately destroy the PCOC when the commissioners started asking too many questions and raising too many objections to the status quo. This proposal aims to remake the PCOC but in a weaker, less transparent and less independent form. Police accountability agencies must be public facing and have a policy component but this is not the way to do it.

We urge a NO vote on this proposed ordinance change until the serious flaws can be corrected and the community has the opportunity for more input, not just in the creation of the CCPO but into the mechanisms of police accountability itself.

For justice,

s/Michelle F. Gross
Michelle Gross, President