

PORTSMOUTH POLICE COMMISSION
MINUTES OF THE DECEMBER 9TH, 2015 POLICE COMMISSION
MEETING

5:00 p.m. Public Session – Eileen Foley Council Chambers, City Hall

John F. Golumb, Chairman
Brenna Cavanaugh
Joseph J. Onosko

- I. **CALL TO ORDER:** the Chair called the December 9th, 2015 monthly police commission to order at 5:00 p.m. Chairman Golumb asked for a motion to go into non-public session.

Action: Commissioner Cavanaugh moved to enter non-public session as provided for in RSA 91-A:3 II (b).

Seconded by Commissioner Onosko.

On a Roll Call Vote: The motion passed to enter non-public session as provided for in RSA 91-A:3II (b) as follows:

Commissioner Cavanaugh: “Aye”.

Commissioner Onosko: “Aye”.

The Chair called the public session back to order in Council Chambers in City Hall at 5:47 p.m.

Present during the public session: Commissioners Golumb, Cavanaugh, and Onosko, Mayor Robert Lister, City Manager John P. Bohenko, Chief Stephen DuBois, Acting Deputy Chief Frank Warchol, City Attorney Robert Sullivan, Admin. Manager Karen Senecal, Exec. Assistant Kathleen Levesque, members of the public and the press.

- II. **PLEDGE OF ALLEGIANCE:** Chief DuBois led the Pledge of Allegiance.

- III. **Acceptance of the Minutes:**

Action: Commissioner Cavanaugh moved to accept the minutes of the October 26th and November 13th, 2015 meetings.

Seconded by Commissioner Onosko.

On a Voice Vote: The motion passed unanimously to accept the minutes of the October 26th and November 13th, 2015 police commission meetings.

- IV. Chief DuBois asked if the commission would suspend the agenda so we could move to the first item on the Chief's agenda and hear from Officer Rochelle Jones.

Action: Commissioner Cavanaugh moved to suspend the rules so the commission could hear from Officer Rochelle Jones.

Seconded by Commissioner Onosko.

On a Voice Vote: The motion passed unanimously to suspend the rules so the commission could hear from Officer Rochelle Jones.

Officer Rochelle Jones briefed the commission on the return of Police Trading Cards – The main purpose is to bring the personal side of our officers to the public, especially the kids. Officer Jones said the cards provided an opportunity for officers to connect individually with people in the course of their day. Officer Jones passed a couple of sample cards around to people in the audience attending the meeting.

Rochelle said the department started this in 1995, and have done this on and off over the years. Officer Jones ran into Commissioner Cavanaugh at the middle school and the commissioner brought it up. Rochelle had just started in her POP position, and she agreed to see if we could get it up and running again.

So far, 36 out of 58 full-time officers have agreed to have cards done. The photos are being done by a photographer who did them for Rochester PD. Karen Senecal identified money that was donated a while ago for a community project, so we already have the money to do the cards. She explained how the cards are going to be promoted, and said bringing them back had been a group effort.

The chair returned to the agenda.

V. **PUBLIC COMMENT SESSION:**

Brendan DuBois – Resident of Exeter; Mr. DuBois read from a prepared statement praising the professionalism of the Portsmouth Police Department. He went on to praise and thank Chairman Golumb for his years of service and for his personal work and professional decorum during the trying months of this year.

Mr. Harold Whitehouse – 58 Humphreys Court. Mr. Whitehouse, addressed the Chair, thanking him for his long service to the city. He listed Mr. Golumb's appointments and committee service, as well as noting his polite and professional manner.

VI. UNFINISHED BUSINESS: None.

VII. NEW BUSINESS:

A. POLICE COMMISSION:

1. Personnel Items That Require Action.

- a. **Action: Commissioner Cavanaugh moved** to accept the resignation of Officer Garret Drew.

Seconded by Commissioner Onosko.

On a Voice Vote: The motion passed unanimously to accept the resignation of Officer Garrett Drew.

- b. **Action: Commissioner Onosko moved** to make the Investigative Summary of the Tideview Group Findings Concerning Anonymous Allegations of Misconduct by City of Portsmouth Police Commissioner Brenna Cavanaugh public. **Seconded by Commissioner Cavanaugh, contingent upon appropriate redactions by the city's legal department.** City Attorney Sullivan said there would be minimal redactions to protect personal information, and that if the motion passes, he would review the report first thing in the morning.

The Chair Called the Vote: The motion passed to make the Investigative Summary of the Tideview Group Findings Concerning Anonymous Allegations of Misconduct by City of Portsmouth Police Commissioner Brenna Cavanaugh public, contingent upon appropriate redactions by the city's legal department.

- 2. Process for retaining an interim Chief of Police:** Chairman Golumb said there had not been a process to select interim chief. He said he was anticipating working with the other commissioners to select someone from at least 3 or 4 candidates, and that did not happen.

Commissioner Onosko said he felt the candidate that was brought forward had no chance to be considered in the Chairman's process, and said everything was legal. He said city attorney had written a memo

indicating that what happened was perfectly legal. Commissioner Onosko added the commission will have a contract shortly. Commissioner Cavanaugh said she had nothing to add, and that it was time to move forward and not look back.

3. Informational Item – PSSG Contract: Mr. Golumb read from a prepared statement on the nationwide executive search process.

Discussion followed, and Commissioner Onosko focused on what constitutes a legal contract. He asked Attorney Sullivan to weigh in on the legality of a single signature contract as it pertains to the commission.

Attorney Sullivan began by reviewing the many problems of the November 13th meeting. He said this context is an important backdrop for his comments.

The question as to whether the contract that was signed was valid comes down to a question of authority. He reviewed the steps of the process. Making the important point that it is the commission as a whole that acts.

Chairman Golumb believed he had been given the authority to sign for the commission by the passing of the motion at the last meeting, and therefore acted on the contract.

Attorney Sullivan said a review of the meeting raises serious questions of whether or not the authority was in fact given to the chair.

Commissioner Onosko repeated his position, and said going forward there needs to be two signatures on commission contracts.

Commissioner Cavanaugh said that her intent at the last meeting was that we would work with PSSG on a contract. She felt they weren't afforded the opportunity as a board to talk about any of the points of the contract. Commissioner Cavanaugh said she would like to vacate the current contract and continue to work with PSSG on the fee structure.

Chairman Golumb spoke about his understanding at the time the vote was taken at the last meeting. He asked the other commissioners if they would ratify his signature on the existing contract so the commission could move forward.

Discussion continued, with the commissioners referring to different portions of the transcript of the discussion and votes on the agreement. The commissioners deferred to Attorney Sullivan.

The city attorney said the legal term for someone taking an action that is outside the individual's scope of authority was 'Ultra Viries'. He believes the action of the chair in signing the contract for the commission was an Ultra Viries action.

Chairman Golumb again asked if the commission would ratify his signature. Commissioner Cavanaugh said she would like to vacate the contract, and continue working with PSSG to get her questions answered.

Action: Commissioner Onosko moved not to recognize this contract as valid in so far as Commissioner Golumb did not have the authority to unilaterally undertake the signing and execution of the contract.

Seconded by Commission Cavanaugh.

On a Voice Vote: The motion carried not to recognize the current contract as valid in so far as Commissioner Golumb did not have the authority to unilaterally undertake the signing and execution of the contract.

Chief DuBois said he wished to clarify the administrative point that going forward, any contracts that come in to the department, will be held until the commission can meet to take a vote on that contract.

Commissioner Onosko said he felt the state statute says the police commission is the final arbiter of contracts for the city and it is the responsibility of the commission regardless of the workload involved.

The Chief again asked if that meant that as a commission they would take up contracts in either a public or a non-public meeting and vote.

Commissioner Onosko said he would defer to the city attorney as to what is done in personnel matters.

The city attorney said there are two kinds of contracts documents that have policy implications, like this one, which is a major contract, would fall into that category. However, he said the city council, through the

adoption of the budget by the council creates authority for the Chief or the Chief's admin. personnel to sign contracts contemplated by the budget. The adoption of the budget itself creates authority to sign contract in the execution of the business of the adopted budget, and that is the other type of contract. Attorney Sullivan said there are a great many things that the Chief would only bring to the commission by way of reporting what he had done, and would not have to actually seek authority.

Commissioner Onosko said the question becomes how far down do we drop to require commission authority. He said he felt the commission was going to have to defer the question, and not address it at this meeting. He said that major items like chiefs, interim chiefs, headhunter organizations are things where the commissioners should be signing off on things, unless Attorney Sullivan knows where that bar lies.

The city attorney said the line could be drawn by the commission itself, as the primary administrative and policy-making body of the department. But the clear line is, documents that have policy implications probably should come to the commission, and that others should probably not.

Commissioner Cavanaugh suggested this issue be deferred to January when there is a new commission. Commissioner Cavanaugh suggested in the interm the commission should come up with a figure above which the commission would have to sign checks with two signatures. The commission decided to wait on deciding this issue.

Chief DuBois asked, with respect with the interim chief process, when that contract is completed, would it then have to come back before the commission for a vote, in the spirit of what was just discussed?

City Attorney Sullivan said yes, once the contract is finalized, it would come back before the commission for approval, and then be forwarded to the city council.

The Chair invited Kim Craven of PSSG to come to the podium if she wished to speak at this time. Ms. Craven said it was unfortunate they couldn't go into non-public and negotiate the contract so Commission Cavanaugh could have her questions answered. She then asked if there was something that could be done to keep the proprietary professional

information contained in their contract confidential. In putting the contract together for the commission, PSSG was of the understanding discussions would take place in a non-public venue, and there is proprietary information in that document Public Safety Strategies Group would like kept confidential. Ms. Craven requested that document be kept confidential. Commissioner Onosko said the commission would honor that request.

4. **Commissioner Onosko** requested a ruling from the city attorney on two items. The first is RSA 105-C:6 regarding compensation. Attorney Sullivan said he would be happy to render an opinion, which he will do in writing after doing research.

Item 2: RSA 105-C:4 Duties; Powers – Commissioner Onosko felt state statute gives the commission the sole authority to set contracts, and wanted a legal opinion as to how this contrasts with the city’s practice of having department head contracts go to the city council for approval. The city attorney said he will render a written opinion on this question as well, after doing the appropriate research.

B. CHIEF OF POLICE:

2. Financial Report

- a. False Alarm Fees
- b. Transfer of Property

Action: Commissioner Onosko moved to transfer the used SUV from the rolling stock of the Portsmouth Police Department to the Seacoast Emergency Response Team.

Seconded by Commissioner Cavanaugh.

On a Voice Vote: The motion passed to transfer the used SUV from the rolling stock of the Portsmouth Police Department to the Seacoast Emergency Response Team.

C. PATROL DIVISION REPORT

VIII. NEXT MEETING: The next police commission meeting is tentatively scheduled for Tuesday, January 12th, 2016.

IX. MISCELLANEOUS OTHER BUSINESS

Commissioner Cavanaugh thanked the Chairman and the Chief for their many years of dedicated service to the police department.

Chairman Golumb read a statement of thanks for the opportunity to serve the City of Portsmouth.

X. MOTION TO ADJOURN

There being no further business before the commission, the chair asked for a motion to adjourn.

Commissioner Cavanaugh moved to adjourn the December 9th, 2015 police commission meeting.

Seconded by Commissioner Onosko.

On a Voice Vote: The motion passed to adjourn the December 9th, 2015 monthly Police Commission Meeting at 7:00 p.m.

Kathe

*Respectfully Submitted By Kathleen Levesque, Executive Assistant
Reviewed By Commissioner Cavanaugh, Clerk of the Commission*

Brenna Cavanaugh