

*In accordance with Virginia Code § 2.2-3708.2, Virginia Code § 15.2-1413 and the City's Continuity of Government Ordinance adopted on March 2, 2021, and Chapter 1289 of the 2020 Acts of Assembly as amended, I hereby call for a **MEETING BY ELECTRONIC COMMUNICATION MEANS** of the Human Rights Commission. This meeting was held by electronic means using the Webex videoconferencing platform because of the COVID-19 Pandemic emergency.*

**March 11, 2021**  
**4 p.m.**

*The purpose of the meeting is to discuss and transact the business of the Commission.*

**Members Present:** Sylvia Nery-Strickland (Chairwoman), Dr. Virginia Jenkot (Vice Chairwoman), Beatriz Amberman, Zakkiyya Anderson, Joe Burnsworth, David Calliott, Thomasine Cubine, Morgan Ellis, Jamal Gunn, Carla Hesseltine, Luis Rivera, Teresa Stanley, Mark Stevens, Ron Taylor, Frances Knight Thompson, Allison White, Rabbi Israel Zoberman

**Staff Present:** Regina Hilliard (Human Resources), Dominique McKinnon (HRC Liaison), Stacy Hawks (Human Resources)

**Liaisons Present:** Rod Ingram (Deputy City Attorney), Captain Henri Norris, Orelious Walker, Captain Scott Wichtendahl

### **I. Call to Order/Roll Call**

The meeting was called to order by Chairwoman Nery-Strickland at 4:03 p.m.

Roll Call of the Commissioners was taken. Commissioner Anderson connected to the meeting after Roll Call was taken. Commissioner Mancoll and Commissioner Orenicia were absent.

### **II. Minutes Approval**

Commissioner Hesseltine made a motion to approve the minutes from the February 11<sup>th</sup> meeting. Vice Chair Jenkot seconded the motion. By a vote of 16-0, the minutes for the February 11<sup>th</sup> meeting were approved.

### **III. Discussion on Investigation Review Panel**

Chair Nery-Strickland spoke about the news announcement regarding the discussion on the Investigation Review Panel (IRP) that occurred during the City Council Retreat. She stated that the matter has not gone to vote by City Council yet. She asked Human Resources Director, Regina Hilliard, if she would answer any questions that the commissioners may have on the IRP discussion. The floor was open for questions or comments.

Commissioner Hesseltine asked, as of today's date, what is the status of the IRP. Regina Hilliard reported that the IRP has been functioning as normal. There are some changes that were made based on what the City Manager wanted to put into place. For example, the recommendation from the IRP, HRC and African American Roundtable, that all complaints should be heard has been implemented.

When a citizen asks for a review of the outcome of their investigation, the IRP no longer has a meeting to determine if it was serious misconduct or an abuse of power. The complaint is automatically heard. The IRP also can now review a complaint even if the citizen does not request a review, for example, if there is public outcry regarding an incident or if the Police Chief requests a review. Another change is the police department is required to respond to the IRP recommendations regarding a case within 30 days, and that response is made public. These changes were within the City Manager's authority and did not have to be approved by the City Council. Regina reported that recently the City Council has been considering potential changes to the IRP that could be implemented once the General Assembly's new law goes into effect on July 1<sup>st</sup>. The General Assembly's legislation has some language that would permit a citizen review board to conduct their own investigations and subpoena witnesses. City Council wants the police department to continue to conduct the investigations, and they want the IRP to continue to have the opportunity to review the investigations for thoroughness and fairness. This was in line with what the HRC put forth in their final recommendations. The General Assembly legislation also had an item that would allow citizen review boards to decide on the discipline for police personnel. City Council is not leaning towards that change for the IRP. What remains outstanding is the General Assembly legislation that says if a locality is going to have a citizen review board, the demographics of the board need to represent the community. The HR department will be working to figure out what needs to be done to make sure the demographics of board is representative of our community.

Commissioner Hesselstine asked if the IRP is going to remain with the same group of people who are currently serving and if there is a plan to expand to be more representative of the different constituencies within the city. Regina reported that they have to look at the make-up of the board to see if it is representative and if it is determined that it is not representative, changes have to be made. Right now, the panel can be 5 members with two alternates, but that may need to change to achieve more diversity. They currently are working to determine what the composition of the board needs to be to represent the community.

Deputy City Attorney Rod Ingram added that City Council will have to determine whether the current composition reflects the demographic diversity of our community before July 1<sup>st</sup>. The term demographic diversity is not defined, so the HR department will be working to find demographics about the city, such as race, ethnicity, gender and age. With that data, an analysis can be done for the current IRP membership to see if more people need to be added to get the diversity that is required as of July 1<sup>st</sup>.

Commissioner Stanley clarified that some commissioners did recommend that investigative and subpoena power were a possible remedy to improve police partnerships, relationships, trust building and transparency in the community. She added that the Pastors/Leaders Community Police Relations Table also gave input on the IRP. She asked who receives the IRP recommendation that has to be responded to within 30 days. Regina stated that the recommendation from the IRP is for the police department, so it goes to the police, and the City Manager is made aware. The response comes from the police department to the IRP and the City Manager within 30 days. Commissioner Stanley stated that from her understanding, no police discipline can be recommended by the IRP. Regina stated that the question was whether the IRP would be responsible for making binding disciplinary decisions for police, and City Council does not want that. Historically, discipline has not been a part of the IRP's charge. Their charge is to review police investigations for thoroughness and fairness. Commissioner Stanley asked if City Council has decided that they do not want investigations conducted by another body outside of Internal Affairs. She stated that, for example, there was conversation that the IRP would be under the City Manager's office where city attorneys could conduct investigations. Regina clarified that there was no discussion about the City Manager's Office or the City Attorney's Office conducting investigations. The discussion was about whether the police department would continue to

conduct the investigations, or the IRP would conduct the investigations. The discussion about the City Manager's Office was concerning their office becoming part of the intake process for IRP requests. That has been put into place so a citizen can start their complaint against the police department with someone in the City Manager's office, as opposed to the previous procedure of starting the complaint with the police department. Commissioner Stanley stated that there has been a lot of confusion from community stakeholders who feel that they haven't been able to step in and explore together the best way to move forward. Regina stated that the information that her department provided to City Council came from the IRP, the HRC and the African American Roundtable. Other groups may have provided City Council with information that she did not have.

Deputy City Attorney Rod Ingram stated that in addition to the information that Regina provided City Council, on February 16<sup>th</sup>, Dr. Veronica Coleman with the Mayor's African American Roundtable spoke on police civilian oversight. He pointed out that in the most serious instances of alleged police misconduct where there is injury to a person or use of force and a loss of life, it is not just Internal Affairs investigating. The first investigation is going to be a criminal investigation conducted by the Commonwealth's Attorney to determine whether the police officer violated criminal law.

Commissioner Gunn asked if the General Assembly's legislation to give subpoena power to civilian review boards would take that power away from the police department or would they both have that ability. Regina stated that the legislation was permissive, if a locality wants to have a citizen review board, they can have certain options for what the board can do. One of those options is to allow the board to investigate an incident. City Council has decided not to add that responsibility to the IRP. Commissioner Gunn stated that he knows that the news report may have been inaccurate, but it colors the debate when the information on City Council's decision was released beforehand and if there is a vote, people already know how the vote is going to go. He said he feels the news that City Council does not want to give the IRP investigative power undercuts the ability of the community to trust the police and gives more ammunition to those who don't have that trust with the police.

Commissioner Taylor stated that he has had multiple discussions with City Council members and significant changes have been made. The city is moving in the right direction. He stated that the statistics show that Virginia Beach has very few complaints with the police department, but the ones that are received deal with people of color. There is an outcry from people of color that they must have confidence in the police department and City Council, and that everything will be looked at fairly and equitably. Commissioner Taylor stated that with the new legislation, if the investigative power is given to the IRP, the investigations can be limited to cases that only come to the board. He suggested that the city can hire an investigator and assign them to the IRP to provide expertise for investigations. He stated that without a legitimate IRP investigating incidents the right way, the next time something occurs in the city there could be protests with outside entities coming in and disrupting our economy. He said from his interpretation of the legislative bill, City Council can give the IRP investigative power, but does not have to give them subpoena power. He said that the common thread that he is hearing from City Council is that they want to protect the police department, and if the IRP is given investigative and subpoena powers, the department will lose officers. If officers are doing everything right, they have no reason to leave. He stated that this is an opportunity to build trust in the community. He reported that the African American Roundtable told City Council and the Police Chief that with an effective oversight panel, if there is an incident, they will stand with the City Council and the police to settle any protests. The way the IRP is structured right now, if there is an incident, he doesn't believe they will stand with City Council and it will add fuel to the fire. He said they have to find a way to come to the middle with the community to build trust and a relationship with the police department.

Deputy City Attorney Rod Ingram stated that this legislative bill could have been written more clearly. He clarified that the bill was interpreted based on statutory construction – how a judge would interpret the law based on the way it was written. He reviewed the legislative bill:

Section B – a locality may establish a citizen review board, which the city has, and City Council has chosen not to disband the board, but rather to keep it.

Section C - The legislation then lists duties that a law enforcement civilian oversight body may have if City Council decides to assign those duties to the IRP. There is a numbered list, 1-8, of different duties.

Section D – This section provides that the City Council shall establish policies, and the law enforcement civilian oversight body may hold hearing. If it's necessary to perform their duties and they're unable to obtain attendance or production of documents, this section provides that the civilian review board may apply to the circuit court for the locality for a subpoena compelling attendance or the evidence.

Deputy City Attorney Rod Ingram reported that the interpretation of his office is that if City Council had selected from the list of optional duties in Section C the one that would authorize the IRP to launch their own investigation parallel to the ones being done by Internal Affairs and the Commonwealth Attorney in certain circumstances, then the subpoena provision of Section D would apply, and the IRP could seek a subpoena. If the governing body does not give the law enforcement civilian oversight body the ability to launch their own independent investigation, then the subpoena powers tied to independent investigations found in Section D would not apply. He stated that this was not an interpretation that they came to lightly; it required substantial time and multiple attorneys working to analyze a somewhat poorly written bill. The bill was a product of a compromise between the House and the Senate. He pointed out that the decision that is made before July 1<sup>st</sup> may not be the final decision. The City Attorney's Office takes its direction from City Council and will do what the majority of City Council instructs them to do. He stated that Regina gave an accurate recap of the discussion by City Council a few days ago.

Commissioner Amberman asked if there is any demographic representation of Latinos on the IRP. Regina reported that currently there are 2 African American members, 3 Caucasian members and 2 vacancies. There was a time where City Council was not having closed session meetings, so they were not appointing people to boards. She believes that the vacancies won't be filled until City Council is provided with demographic information so they can determine how they want to fill those slots and if they are going to add to the membership. Commissioner Amberman stated that when people discuss citizen review panels having investigative power, they think the investigation is done by members of the panel, but from her experience, in reality those bodies have resources and hire their own investigators. She asked if there is a plan to give the IRP investigative resources so in the light of public review, it would seem more neutral rather than just from the police department investigating its own. Regina stated that from her understanding City Council is not currently anticipating providing resources for investigations. Commissioner Amberman stated that she agrees with Rod, that unfortunately, the General Assembly was not clear in this legislation and basically told localities and jurisdictions that they don't even need a citizen review panel. Deputy City Attorney Rod Ingram added that if any commissioner knows members in their community who have an interest in serving on the IRP, he would encourage them to fill out a Talent Bank application because City Council may very well be looking to fill slots. He suggested that they self-disclose their demographics and express in the application's open-ended question that they represent an underrepresented community. He stated that current police officers cannot apply because the state prohibits law enforcement from serving. If the person is a former law enforcement officer, they need

to understand that there is one slot for such a person and that it's a non-voting position to provide that perspective.

Commissioner Stanley stated that this is a very serious issues that has human rights implications. The purpose of the IRP is to build trust and transparency between the police department and community. Its mission is to make sure that human rights are protected and stands by to be loyal to both the exemplar police department as well as the community that wants to be in partnership to keep the community safe. She stated that there was no formal HRC vote for the recommendation of no investigative and subpoena power, and she wants to make it clear that that recommendation was not accurate. She added that she feels more collective stakeholders in the community are needed to work through this issue to build trust, transparency, and the best practices. The Pastors/Leaders Community Police Relations Table thought they were doing that work with the police department, but it seems that City Council made a decision with no collective investment. She suggested that the HRC weigh in by saying that we want the best possible outcome as the formation of the IRP moves forward and support human rights for all aspects, our exemplary police department as well as the community.

Chair Nery-Strickland clarified that the Commission was asked by Councilman Berlucchi to give input on the IRP, and all commissioners were given the opportunity to contribute. The names of the commissioners along with their comments went forward to Councilman Berlucchi, Rod Ingram and Regina Hilliard. She confirmed that the HRC has not had a formal vote, just as City Council hasn't had a formal vote. Deputy City Attorney Rod Ingram stated that on the PowerPoint presentation that Regina gave to City Council after September 18<sup>th</sup>, the slide for the HRC says "selection of HRC suggestion for change: provide an HRC commissioner a seat on this panel, clarify the application request form for an IRP review to add more specificity such as codes infraction, review deadlines for filing a complaint, review the relationship between the Internal Affairs investigation report and the IRP's review". There was no bullet point that said the HRC voted against this or weighed in on subpoena power. Regina clarified that the information that she received from HRC did recommend no investigation and no subpoena power.

Commissioner Amberman stated that her recommendation that was passed along to Councilman Berlucchi was not verbatim; it was edited. Only some of her suggestions were selected, and it needs to be clarified that not the entirety of what was provided was passed forward.

Commissioner Taylor asked if the IRP reviews what Internal Affairs sends them and who guides the panel through the review of the information that is provided by the police department. Regina reported that the IRP receives the complete investigative file and is tasked with reviewing that information. They can ask questions of the police department and the complainant; the complainant can bring a witness or someone who can help them answer questions. The police's attorney as well as Rod Ingram are present to answer any legal questions. Commissioner Taylor asked if the IRP has ever had issues requesting additional information from the police department, and Regina stated that as far as she is aware, they have not had any problems getting requested information for the IRP. The police department is forthcoming to give the IRP whatever they need. There may be instances where the actual officer involved may not be at the hearing, but representation from the police department is at each and every hearing to answer questions. Deputy City Attorney Rod Ingram stated that at the last IRP hearing, the complainant asked that the IRP review the body cam footage, and the entire video was included in the materials provided to the IRP members from the Internal Affairs file. It was clear by the questions that the panel asked that they had carefully viewed the video and took it into consideration when listening to the complainant and the complainant's witnesses. He added that during a hearing, the complainant and his or her witnesses will present their perspective, someone from Internal Affairs will talk about the IA investigation, but the IRP chair will go back to the complainant. The complainant doesn't directly question the police, but if the complainant has a

question based on what the police said, the practice is that the chair will ask the police for an explanation. Commissioner Taylor asked if IRP has a resident expert to guide them through the review of the information that they received from the police department. Deputy City Attorney Rod Ingram stated that he is present during the hearing to answer any questions the IRP may have about the polices and procedure. They may have questions about the information during deliberation, and they are answered. The IRP reviews the information from the police department on their own before the hearing, being mindful of the complaint from the citizen's perspective.

Vice Chair Jenkot stated that she is happy to send the input that they received from 9 commissioners regarding the IRP to anyone who wants to see them.

#### **IV. Recommendation for 2022 Legislative Package: Virtual Meetings**

Chair Nery-Strickland stated she has asked Deputy City Attorney Rod Ingram if virtual meetings can be continued after the pandemic, especially for the committee meetings. She asked if the Commission could write a letter to City Council asking them to include in their legislative packet the ability to continue holding virtual meetings as we wish. Deputy City Attorney Rod Ingram stated that the HRC can give staff the direction to include this item as part of the HRC's request for legislation to be included as part of the City Council's annual legislative agenda. He and Staff Liaison McKinnon will draft the item for the HRC's consideration to potentially submit to the City's new legislative liaison, Debra Bryan. He stated that he believes the HRC will not be alone in this ask. He suggested that the HRC seek this legislative item for advisory bodies like the HRC, Parks and Rec, and the Minority Business Council, not the boards that have the power to unilaterally alter your life like the Wetlands Board.

Commissioner Cubine asked if this suggestion is indefinitely or once the pandemic has passed. Deputy City Attorney Rod Ingram reported that right now there is a law that goes until 2022 that says, so long as the Governor has declared a state of emergency, the HRC can continue to meet virtually. The moment the Governor says that the state of emergency is over, the ability to meet virtually under the current law will disappear. This suggestion would be that the General Assembly change the law during their next session that begins in January so that advisory committees can continue to meet virtually, after making arrangements so the public can participate, even if the Governor hasn't declared a state of emergency. Commissioner Cubine stated that she is not in favor.

Commissioner Anderson asked if we would offer a flex option where the virtual opportunity would be available to some members while others are meeting in-person. Deputy City Attorney Rod Ingram reported that the HRC has adopted the virtual participation by a single member policy that some commissioners have taken advantage of, and it allows individual members to participate virtually so long as there is quorum assembled in a room. If commissioners are participating in this option for a health reason, there is no limit, but for any other reason, there is a limit of 3 times per year. Deputy City Attorney Rod Ingram stated that the HRC can continue to do that, but this requested legislative item would give the Commission an additional option. He suggested that the HRC vote to direct staff to draft the legislative agenda item that would allow the HRC to meet fully virtually or partially virtually post pandemic. Then once the agenda item is drafted, the HRC can vote to add the item to the legislative packet that will go to City Council. Commissioner Anderson stated that the flexibility of in-person and/or virtual, opens up access to different kinds of people and different demographics that may want to join a board or commission.

Commissioner Amberman stated that meeting virtually amplifies the way that the HRC can function, and for every meeting it could be decided to meet in person or not. It gives the HRC the flexibility for

certain months, like December when the holidays may prevent a quorum, people can meet virtually rather than in-person. She would like to move forward with requesting this legislative item.

Chair Nery-Strickland clarified to Commissioner Cubine that this doesn't mean the HRC would always meet virtually, it would just give the Commission the option. Commissioner Cubine stated that she understands better that there will be flexibility with meeting virtually and that is fine with her.

Commissioner Burnsworth made a motion to ask staff to draft an item requesting that the legislature consider extending the virtual meeting option for advisory boards post pandemic. Commissioner Amberman seconded the motion. By a vote of 14-1, the motion was approved.

## **V. Chairman's/Committee/Liaison Reports**

Chair Nery-Strickland reported that the Awards Committee decided not to hold an awards ceremony in person in this year, but the HRC can't go another year without an award ceremony. She asked for a vote to hold the ceremony virtually.

Commissioner Burnsworth stated that he does not want the ceremony to be the same format as last year's video. He said that he had the opportunity to attend the Urban League awards presentation that was done beautifully and recognized the awards recipients in an honorable, virtual way. He said that if it will be in the same format as last year, he will vote "no," and if the Commission says it is looking at different options, he will vote "yes." Commissioner Rivera agreed with Commissioner Burnsworth's concern with how the ceremony will be packaged and asked if Commissioner Burnsworth could share his experience with the other virtual awards ceremony so that perhaps the HRC can take some of those ideas and implement them. Vice Chair Jenkot invited everyone to attend the next Awards Committee meeting or send any information to her, Chair Nery-Strickland or Commissioner Calliott that may be useful as the committee takes the next steps. Commissioner Burnsworth said that he would send the link to the Urban League virtual ceremony to Staff Liaison McKinnon for distribution. Commissioner Anderson reported that the link to that ceremony is on the Urban League Facebook page.

Vice Chair Jenkot made a motion to hold this year's awards ceremony virtually. Commissioner Hesseltine seconded the motion. By a vote of 15-0, the motion was approved.

Commissioner Amberman reported that she will send her report on COVID-19 via email, and she will include a list of all the legislative bills that were passed at the General Assembly and are going to the Governor's desk. Vice Chair Jenkot reported that she will send in an email all the equality bills that were passed and are on the Governor's desk now. Commissioner Taylor stated that the House bill that changes Virginia Beach from a hybrid, at-large voting system to a district voting system will really impact Virginia Beach. It will most likely go into effect in 2022. He reported that a lot of people are asking the Governor to veto the bill because they want it to go to a referendum and let the people decide instead of the state legislators.

Commissioner Amberman thanked City Council for appointing her for another term to the VBHRC.

Commissioner Stanley asked if the HRC could get some education on the House bill regarding the voting system. She stated that there needs to be a correction in the Work Plan, a revision to the title for Hampton Roads Legislative Collaborative Table. She thanked all the commissioners that were part of the legislation that was passed such as STEP-VA funding, abolition of the death penalty and

voting access. She reported that the Seeds of Hope mental health wellness project for the Season of Non-Violence is on-going. One of the components is creating inspiration rocks. She will send the flyers and information for the project to Staff Liaison McKinnon for distribution. She commended Commissioner Stevens and his business at the Oceanfront for being an integral partner in the effort to normalize mental health conversations. She added that the Pastors/Leaders Community Police Relations Table is tonight at 7, and she sent out the minutes from the last meeting.

Commissioner Cubine asked what the deadline is for submitting recommendations for this year's legislative package. Deputy City Attorney Rod Ingram stated that he doesn't believe the date has been set yet, but based on past years, if City Council is going to vote on the legislative package in the fall, then typically the City Manager will ask department heads for the recommendations from their boards in the summer. He anticipates a vote on the legislative packet by the HRC in August. Once he has the new timeline established by the new legislative liaison, he will send it to Staff Liaison McKinnon to share with the Commission.

Chair Nery-Strickland reported that the Mayor has created an IDEA Commission, and it has been suggested that there will be a Diversity Director. She doesn't have any more information at this time. Commissioner Amberman congratulated the Mayor on the creation of this commission for being ahead of the game as there is going to be a law instructing localities to create a diversity committee. Chair Nery-Strickland added that there was an article about facial recognition camera being used at the Oceanfront and suggested that the HRC wait to see what happens after the Police Chief's investigation.

## **VI. Adjournment**

Chair Nery-Strickland adjourned the meeting at 5:55pm.

**Next Meeting:**  
Thursday, April 8, 2021 @ 4:00 p.m.  
Virtual Meeting