

CITY COUNCIL STANDING COMMITTEE
Special Ordinances & Administration Meeting
Monday, September 7, 2010 – 5:30 p.m.
1st Fl. Council Conference Room – City Hall

Present: Chair, Councilor Sefatia Theken; Vice Chair, Ann Mulcahey; Councilor Bruce Tobey

Absent: None.

Also present: Councilor Hardy; Councilor Whynott; Councilor Verga; Jim Duggan

The meeting was called to order at 5:35 p.m. A quorum of the City Council was present.

- 1. *Amend Chapter 17 “Police Article II re: the non-civil service process of selecting the Police Chief – review of proposed ordinance language from City Council Public Hearing of August 31, 2010***

Below is the ordinance as passed by O&A prior to the beginning of the Public Hearing on the matter:

The Ordinances & Administration Committee voted unanimously to recommend to the City Council to AMEND the Gloucester Code of Ordinances Chapter 17 POLICE, Article II POLICE DEPARTMENT in its entirety as follows:

Chapter 17 POLICE
ARTICLE II. POLICE DEPARTMENT

17-16 Police Chief

- a) The Mayor shall appoint the Police Chief who shall hold the office for a term of three years. The appointment of the Police Chief shall be subject to confirmation by the City Council; as provided in Section 2-10 of the Charter. The Police Chief is exempt from the Provisions of Chapter 31 of the General Laws.
- b) Within thirty days of the position of the Chief of Police being declared vacant, the Mayor shall appoint a temporary Police Chief who shall serve until a permanent chief is selected in accordance with the provision hereof.

17-17 Selection of Police Chief; qualifications.

The Chief of Police shall be selected by the Mayor and shall have the following minimum qualifications, in addition to those developed by the assessment process provided in Section 17-18(b):

- (a) The Chief of Police shall be a law enforcement professional with minimum of 15 years experience in federal, state, county, municipal or military policing, no less than five of which shall be in a progressively responsible law enforcement management position;
- (b) The Chief of Police shall have a master’s degree;
- (c) Preference shall be given to candidates who have experience with the following:
 - i) in a multi-lingual and multi-cultural urban law enforcement environment from municipalities with a population of 30,000 or more residents; possess managerial experience, as defined in

- paragraph (a), in the command structure of the Gloucester Police Department;
- ii) bilingual, with the second language reflecting the linguistic diversity of the City of Gloucester;
 - iii) possess a minimum rank of lieutenant or higher for a minimum of three years in a policing environment;
 - iv) a nationally recognized police leadership program(s), such as the Senior Management Institute for Police, and the FBI National Academy;
 - v) financial management, innovations in police operations, and information technology as it pertains to law enforcement;
 - vi) labor relations, community relations, mediation and facilitation skills; and including staff development, training, community policing and use of crime data for deployment and decision-making.

17-18 Selection of Police Chief; manner of appointment.

(a) The candidates for Chief of Police shall be reviewed by a Selection Committee consisting of the following individuals:

- (1) The Personnel Director, who shall serve as the Chair of the Selection Committee;
- (2) One member of the City Council to be appointed by the President of the City Council;
- (3) Two members of the general public to be appointed by the President of the City Council, with at least one of said members being a representative of the City's socio-economic and racial and ethnic segments; and,
- (4) Two members of the general public to be appointed by the Mayor, with at least one of said members being a representative of the City's socio-economic and racial and ethnic segments; and,
- (5) Two sworn officers of the Gloucester Police Department, one of whom shall be a member of the union representing patrol officers, elected by that body; and one of whom shall be a member of the union representing superior officers, elected by that body.

The Mayor may appoint appropriate support personnel to facilitate operations of the Selection Committee.

(b) In consultation with the Selection Committee and the Purchasing Agent, the Mayor shall select a qualified recruitment and assessment consultant to analyze candidates for Chief of Police. After consultation with members of the public at community meetings, the consultant shall develop selection criteria; recruit qualified candidates; and administer the selection process. The process shall consist of, without limitation, a written exam, an assessment center and a psychological evaluation.

(c) The Selection Committee shall hold public interviews of the finalists. The Committee shall vote a list of no more than five and no less than three unranked qualified candidates for Chief of Police and shall submit such list to the Mayor. All votes taken by the Selection Committee shall be by majority vote of those present. If the Selection Committee determines that there are fewer than three candidates for Chief

of Police, the Selection Committee shall nonetheless send the names of the candidate(s) to the Mayor. The Mayor may choose to commence a new selection process if the Selection Committee submits a list of fewer than three candidates or for any other reason designated in writing.

(d) The Mayor shall appoint a candidate from the list, subject to confirmation of the City Council. Prior to confirmation, the City Council shall be provided with a copy of the contract negotiated with the candidate selected by the Mayor, as well as a complete report of those candidates who applied and were deemed less qualified. The contract may not be subsequently amended without the approval of the City Council. The term of the contract shall be for at least three years, but no longer than five years.

(e) Upon such time as the Mayor shall become aware of a vacancy in the office of Chief of Police, the Mayor shall within a reasonable period of time notify the City Council that a vacancy has occurred. The Mayor shall thereafter commence the process to fill the vacancy, in the manner prescribed herein.

17-19 Powers and duties of Police Chief

The Police Chief shall manage the Police Department. He/she shall be responsible for the discipline and efficiency of the department. The Police Chief shall act as the City Marshal. He/she shall have control of the department, its officers and members, the care of the police station, the care and custody of all the property of the department and shall keep a record of its business.

17-20 Appointment and removal of Officers

The Mayor shall have the power to appoint all police officers and patrolmen who shall hold their office at the discretion of the Mayor subject to the laws pertaining to civil service and to the collective bargaining agreement. The Chief of Police is exempt from civil laws and the terms of the collective bargaining agreement. All police officers are required to be citizens of the United States and within nine months of his/her appointment, to reside within 15 miles of the limits of the City of Gloucester as required by Chapter 41, Section 99A of the General Laws.

17-21 Composition

The Police Department shall consist of the Police Chief, and as many lieutenants, sergeants and patrolmen as may be deemed necessary. The department shall also include supporting administrative staff.

Consecutively renumber the remainder of Article II Police Department as follows:

- 17-22 Unlawful use of insignia, etc.
- 17-23 Firefighters appointed as police officers
- 17-24 Chief of Police to act as dog constable
- 17-25 Chief to receive complains and prosecute
- 17-26 Records of persons arrested and disposal of cases
- 17-27 Powers and duties of police officers
- 17-28 Acceptance of gifts, etc., by officers
- 17-29 Officers acting as bail or surety
- 17-30 Return of City property when member leaves office
- 17-31 Suspension of police officers
- 17-32 Mutual aid program

Councilor Theken stated that Councilor McGeary had sent an email earlier this afternoon to the Committee and asked it be read into the minutes as follows:

“Sefatia, Ann, Bruce:

I hope to be able to attend tonight's meeting of O&A, but in case I am unable to please include the following comments in the record:

In general, I support the language for the ordinance for selecting a new police chief as written. I believe that by removing the chief's position from Civil Service, we have taken away some of the protections that the Civil Service system afforded against the politicization of the selection of a new chief. While I have no doubt that our current mayor would be scrupulous in attempting to select the best person for the job, she will not be the mayor always.

The protections afforded in the proposed ordinance help ensure that the choice of a new chief will be transparent and based on qualifications, not political connections.

Further, the proposed change in section 17-18 (b) from "the mayor shall" to "the mayor may" and a similar changes section 17-18 (d) would have the effect of eviscerating the ordinance. The protections outlined in the ordinance should not be regarded as suggestions but rather as obligations.

Having given up the protections of Civil Service for the selection process, we should endeavor to ensure that our substitute ordinance affords strong protections against politicization and capriciousness in the selection process.

The one area of concern I have concerns the requirement that a chief undergo is in section 17-18 (b) where a requirement is made for the chief to undergo a "psychological evaluation." Mr. Bain, the personnel director, raised the question of whether this would raise issues under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. I don't believe it does, but the question should be discussed.

Very truly yours,

Paul

Paul McGeary
31 Eastern Ave
Gloucester MA 01930”

Also, the following email was received today from Former City Councilor Jason Grow as follows:

“Sefatia....

I just wanted to run some thoughts regarding the chief's ordinance that you're talking about at OA tonight -- I may not be able to make the meeting depending on the kids' schedule --

1: I think the ordinance is pretty strong and pretty good. It brings in community/citizen input and that should be encouraged! If the admin wants to make the selection committee an odd number, I would suggest adding another seat belonging to a resident nominated by the Council rather than reducing the size of the committee. The committee that does the Superintendent / Principal selections includes teachers, administrators and a wide range of parents who serve on various site base committees as well as who are just interested in participating - it works and it brings in a well-rounded point of view to the process - don't be tempted to dilute this.

2: Don't be tempted to water down the "Shalls" with "Mays"... if there are criteria to consider then by god they should be considered... "May" means nothing-- put the word "may" in there and you might as well gut it. "May" is too easily interpreted as "disregard at will" -- That the ordinance directs the committee to consider a broad range of qualifications is a good thing.

Ultimately that's to help bring the selection down to three to five candidates who are submitted, unranked for final selection. The Mayor still has ultimate decision on the final candidate which is fine, but make sure that the selection committee has done the best job possible to put forward really strong candidates. Take for instance the bilingual preference -- what a GREAT addition to the lineup -- to have a chief who has the capacity to speak Italian, or Portuguese or Spanish? That's a huge positive and while it is only one aspect that is considered, it's a pretty good thing for the Council to keep in mind in crafting this ordinance. The Ordinance doesn't require bilingualism, but only acknowledges that that is an asset worth considering in the process.

3: This is the first time that the Council has had a chance to really review and craft how such an important position is selected. Let's not let the opportunity to really make a community minded, professionally geared, criteria based process pass us by.

I know the Mayor's office wants as little outside input as possible - but that's not in the best interests of the community at large -- this is about building transparency, trust and accountability and since it isn't coming from the administration, it needs to come from the Council.

I'll try to come by tonight, but I hope if I can't that you all do the right thing by the residents. This is about setting a strong framework for making strong personnel selections for years to come.

Best
Jason"

Councilors Theken, Mulcahey and Tobey discussed with Mr. Duggan the HIPAA question and the psychological evaluation on Page 2 under 17-18 (b) of the proposed ordinance. It was noted that a waiver would be signed by the candidate; while they can refuse to sign that waiver, the applicant's candidacy would not go further should they not desire to undergo the psychological evaluation.

MOTION: On motion by Councilor Tobey, seconded by Councilor Theken, the Ordinances & Administration Committee voted 3 in favor, 0 opposed 17-18 b) be amended by inserting after the clause, "the consultant shall develop selection criteria; recruit qualified candidates" the following words: "select the most qualified candidates which shall be no more than seven or less than three who shall be considered finalists and administer the selection process to these candidates. The process shall consist of, without limitation, a written examination, a professional assessment center and a psychological evaluation.

(Councilor McGearry entered the meeting at 5:50 p.m.)

The Committee looked at the Administration's wish to add a sixth category to section 17-18 (a), that of Emergency Management Director. Since that position did not yet currently exist under the Personnel Ordinance. However, Mr. Duggan noted the Administration would be putting forth a proposal shortly for that part-time budgeted professional position. It was proposed that the language reflect that it be a public

safety official appointed by the Mayor that would be the Emergency Management Director if such a position exists at that time; and that there was leeway if one didn't exist the Mayor could appoint another public safety official.

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration voted 3 in favor, 0 opposed to amend Section 17-18 a) (6) by inserting the words “a public safety official appointed by the Mayor, who shall be the Emergency Management Director, if such position shall exist at that time.”

There was then a discussion on Section 17-17 c) and 17-18(b) with regard to the “shalls” and “mays”. In addition the Committee and the Councilors present discussed the multi-cultural nature of the community and the languages spoken in Gloucester; and how that affects the requirements of the proposed ordinance. Concern was expressed about committing to a specific language and what languages were appropriate or not. Shall the Committee give preference with certain consideration ‘under their belts’ and shall they as opposed to may be in 17-18(b) in way that builds complete public confidence. There was a concern also that it was important to commit to a high level of a professional selection of a particularly sensitive ordinance. It was noted that a second language was a preference but did not “handcuff” the ordinance either. The Committee then passed the following motion:

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration voted 3 in favor, 0 opposed Section 17-17 c) be amended by deleting i) and ii) and renumbering the four sections that follows and by inserting a section d) preference may also be given to candidates who have experience with the following: i) in a multi-lingual and multi-cultural urban law enforcement environment from municipalities with a population of 30,000 or more residents; possess managerial experience, as defined in paragraph (a), in the command structure of the Gloucester Police Department; ii) bilingual, with the second language reflecting the linguistic diversity of the City of Gloucester.

A discussion about the length of the Police Chief contract and the pro's and con's of it being three years or higher, that of up to five years. After a full conversation between the Committee, the other City Councilors present and Mr. Duggan, the following motion was passed:

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to amend Section 17-18 d) by deleting the last sentence and inserting the following language: The term of the contract shall be three years. The Mayor may reappoint said Chief for subsequent contractual terms of three years subject to City Council confirmation.

At the behest of Councilor Hardy, the Committee addressed 17-17 b) the Chief of Police shall have a masters degree which she felt was too open ended. The Committee and the Councilors felt it important have a related degree and amended the language as follows:

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to amend Section 17-17 b) to be amended by adding the following words: in police science or related fields.

(Councilor Verga left the meeting at 7:10 p.m.)

There was also a lengthy discussion regarding the point in which the legislative branch became involved in the process brought up by Councilor Whynott and discussed with the Committee and Councilors present. In addition Councilor Hardy expressed concern as to when a vacancy was declared, and when it

was, should there be a date certain by which an interim Chief should be appointed by the Mayor, and also discussed the instance of if a vacancy occurred due to illness; and when would the position be declared vacant; and when would the Mayor be responsible for informing the Council of said vacancy. In addition, there was a concern regarding the current interim Police Chief being in the Civil Service. If the Mayor reappointed the current interim Chief upon the end of his contract in the spring, would that Chief now be subject to the new ordinance and have to go through the process set forth or would they be “grandfathered” and be exempt from that process. The Committee also expressed concern related to the November 2009 vote by the Citizens of the City of Gloucester to remove this position from Civil Service. Councilor Hardy expressed that this should not be left to the discretion of this Committee or the Mayor as to when or if this position should be taken out of Civil Service; the people had spoken. The concerns expressed regarding vacancies and the current situation with the interim Chief would be referred to General Counsel, Suzanne Egan for a response to the Council prior to their September 28, 2010 City Council meeting when the public hearing would continue on the matter of the proposed ordinance.

The questions to be forwarded to Suzanne Egan, General Counsel are as follows:

- When the ordinance is passed by City Council, at what point in time is the position of the existing Civil Service Chief declared vacant by the Mayor.
- If a non-Civil Service Chief becomes ill and is unable to perform his/her duties for any length of time and it is deemed necessary to appoint an acting Chief, does the acting Chief come under the existing Civil Service Police Department ranks or does the Mayor interview under the new ordinance for the acting Chief.
- It was the Committee’s understanding, and Mr. Duggan confirmed, that the existing Civil Service Chief has a renewable option on the existing contract. It was also the Committee’s understanding that the interim appointment to the Civil Service Chief was made with the understanding that the position would become non-Civil Service upon the outcome of the binding question during the 2009 local election and the passage of this ordinance. However, Mr. Duggan disagreed with the Committee’s understanding on the matter and stated that he believed the option of the contract was viable. Therefore, the Committee asks the City’s Legal Counsel to verify this to be the case.

(Councilor McGearry left the meeting at 7:20 p.m.)

The discussions ended with a final motion regarding the language in 17-18 d) as follows:

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed in Sec. 17-18 d) in the second sentence after the word Mayor place a period then delete as follows: “, as well as a complete report of those candidates who applied and were deemed less qualified.” and then the paragraph language continues to the end.

The Councilors discussed whether the new job description had to be referred back to the City Council and its contents, which would be taken up at a later date to be named.

A motion was made, seconded and voted unanimously to adjourn the meeting at 7:37 p.m.

**Respectfully submitted,
Dana C. Jorgenson
Clerk of Committees**

DOCUMENTS/ITEMS SUBMITTED AT THE MEETING: Draft revised language of the Police Ordinance by Mr. Duggan