



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Alaska

April 6, 2019

Mayor Richard Beneville
Nome City Council
P.O. Box 281
Nome, AK 99762
Via email

Re: Creation of a Nome Public Safety Commission (O-19-02-02)

Dear Mayor Beneville and members of the Nome City Council:

Thank you for the opportunity to provide feedback on O-19-02-02, an ordinance that would create a Public Safety Commission to advise the Nome City Council on matters of policing and public safety. We commend you for taking this step toward improving transparency and public accountability for the Nome Police Department (NPD), and ask that you give our recommended amendments, detailed below, your consideration.

Since our founding in 1971, the American Civil Liberties Union (ACLU) of Alaska has been the 49th State's guardian of liberty: through our litigation, legislative expertise, grassroots advocacy, and public education efforts, we work to protect the civil rights and individual liberties enshrined in the U.S. and Alaska Constitutions.

With the benefit of a Public Safety Commission to examine policing matters, the Nome City Council will enhance its ability to address public safety needs, contribute to a culture of transparency, and begin to repair fractures in local police-community relations. Bodies like these across the country have also become an important mechanism for ensuring civil rights protections in policing.

The City of Nome has acknowledged that past practices of the NPD have contributed to public mistrust of the police.¹ Accounts of a lack of NPD response to Alaska Native women who have reported sexual assault crimes have not only been

¹ Memorandum from City Attorney Brooks Chandler to Interim City Manager John Handeland and the Nome City Council, dated February 19, 2019, as published in the packet for the March 25, 2019 Nome City Council meeting, pp. 123-6.

brought directly to the Nome City Council by concerned residents, they have made it into statewide media.² We commend the City Council's efforts to respond to these troubling community concerns, and believe that O-19-02-02, with the amendments we offer below, can create an effective Public Safety Commission that will equip the City Council to better respond to community needs.

The set of amendments presented below are organized by the issue they are intended to address, and offer legislative language that can be amended or adopted as you deem appropriate.

ISSUE: ENSURE PUBLIC CONFIDENCE IN THE PUBLIC SAFETY COMMISSION'S INDEPENDENCE

Given the mistrust and damaged police-community relations that currently exist in Nome, it is especially important to ensure this commission does not appear to be unduly influenced or controlled by law enforcement. When there is the perception of a lack of accountability, it erodes public confidence in the police's commitment to fairness and impartiality in enforcing the law.

First, including the Nome Police Chief and the City Manager (to whom the Police Chief reports) in the Commission, even in an *ex officio* capacity, calls the independence of this commission into question, undermining the legitimacy and trust that the commission is intended to build. While the commission should have a cooperative, respectful, and productive relationship with the Police Chief and City Manager, the Police Chief and City Manager should not themselves be members. (For comparison's sake, the Nome Museum and Library Commission, which performs a similar advisory role for the Nome City Council, does not include any current museum, library or city officials as *ex officio* members.³)

Second, a key factor in the success and effectiveness of the Public Safety Commission will be its access to information from the NPD. It is important to ensure that the police cannot impede the work of the commission by withholding or denying requests for information. The Public Safety Commission is charged with making recommendations to the City Council "to promote the efficiency, quality and availability of public safety services," as well as "on the organizational structure

² See, for example: "We're Still not Safe: Nome Reckons with Sex Assaults," Z. Hughes, Alaska Public Media, Dec. 12, 2018. <https://www.alaskapublic.org/2018/12/12/were-still-not-safe-nome-reckons-with-sex-assaults/>; and "911 Dispatcher: I Was Raped and Nome Police Colleagues Ignored the Case," K. Hopkins, *Anchorage Daily News*, Sept. 3, 2018. <https://www.adn.com/alaska-news/crime-courts/2018/09/03/911-dispatcher-i-was-raped-and-nome-police-colleagues-ignored-the-case/>

³ See Nome Code of Ordinances 2.30.030(b).

and policies of the public safety department.”⁴ The Commission should have access to the information it needs to fulfill its charge, whether in the form of crime data, policy documents or other relevant materials. This is not intended to pose an undue burden on the Public Safety Department; rather, it ensures the Department cannot single-handedly thwart the Commission’s work if a particular area of inquiry is seen as unfavorable or disadvantageous.

PROPOSED AMENDMENT 1 – COMPOSITION:

Section 2.30.040(a) shall be amended to read as follows:

There is established a public safety commission consisting of nine members appointed for overlapping three-year terms. ~~The police chief and city manager shall be ex officio members of the commission.~~

In addition, Section 2.30.040(b) shall be amended to read as follows:

The mayor shall appoint the members of the commission, subject to confirmation by the city council. In addition to the requirements of NCO 2.30.020(b) a member of the commission shall not **be a current employee of the Nome Police Department, and shall not** have been:

1. employed by the Nome police department within the past two years;
2. convicted of a felony within the past ten years;
3. convicted of a misdemeanor involving acts of sexual assault or domestic violence within the past two years, or
4. convicted of a misdemeanor crime involving acts of moral turpitude within the past two years.

PROPOSED AMENDMENT 2 – ACCESS TO INFORMATION:

O-19-02-02 shall be amended with the inclusion of a new Section 3 to read as follows:

Section 3. Amendment of NCO Section 2.40.040(b). Title 2, Chapter 2.40, Section 040, Subsection (b) of the Nome Code of Ordinances is hereby amended by adding a new clause 5 to read as follows:

5. Provide such assistance to the public safety commission as it may reasonably request, including records and other materials necessary for the fulfillment of its duties, except such records or materials that cannot be disclosed by law.

⁴ Detailed in the ordinance’s proposed 2.30.040(i)(1)(D).

Upon adoption of this amendment, the ordinance's existing Section 3 ("Effective Date") should be renumbered as Section 4.

ISSUE: LOWER TRUST BARRIERS FOR THOSE WISHING TO REPORT POLICE MISCONDUCT

Individuals who have had negative interactions with police and believe they are victims of police misconduct can find reporting those experiences to the police to be intimidating. They question whether they will be believed and whether the law enforcement system will take their concerns seriously. They may also fear retaliation. In addition, for those who have experienced traumatic crimes, the experience of re-reporting these events to police can trigger the trauma anew. These factors not only deter individuals from reporting, they deny law enforcement agencies the opportunity to be alerted to potential issues within the force.

To provide citizens a non-police option for reporting police misconduct, many localities designate a civilian alternative for receiving those complaints. (Note: civilian intake of complaints of alleged police misconduct is distinct from civilian investigations, and does not change the management, discipline or accountability of individual police officers.) Examples of civilian intake of police misconduct complaints include cities like Austin, Texas and New Orleans, Louisiana. There is also a local precedent: Nome City Attorney Brooks Chandler has noted that Interim City Manager John Handeland "has enlisted several members of the public as additional volunteer resources" to receive citizen complaints, "primarily to make the process less intimidating, but also to increase public awareness."⁵ With the creation of a volunteer citizen advisory commission on public safety, this *ad hoc* recruitment of volunteers can be replaced by the appointed group of residents who step forward to play a role in improving public safety and police-community relations in Nome.

PROPOSED AMENDMENT 3:

Section 2.30.040 (h) ("Purposes") shall be amended with the following addition:

4. To provide an alternative location for accepting administrative complaints of officer misconduct.

⁵ Memorandum from City Attorney Brooks Chandler to Interim City Manager John Handeland and the Nome City Council, dated February 19, 2019, as published in the packet for the March 25, 2019 Nome City Council meeting, pp. 123-6.

In addition, Section 2.30.040 (i) (“Powers and Duties”) shall be amended with the following addition:

F. Receive confidential complaints of officer misconduct for referral to the Nome Police Chief for investigation. In connection with these complaints, Commission members:

1. shall, in collaboration with the Nome Police Chief, devise a confidential means of receiving complaints.
2. may obtain the complainant’s personal information; the nature of the complaint; witness information; the incident location, date, time; and the Nome Police Department personnel involved.
3. shall not gather evidence, contact or interview witnesses (except the complainant as provided herein), or otherwise independently investigate a complaint.
4. shall promptly forward the completed complaint in writing, signed by the complainant, to the Nome Police Chief.
5. shall assist individuals in understanding the complaint process and requirements for filing, but shall not solicit or attempt to compel the filing of a complaint by any individual.

Note that a certain amount of training would be helpful to ensure that intake interviews are conducted competently and sensitively. Training needs are addressed more generally in Proposed Amendment 7, and should be kept in mind when considering this amendment.

ISSUE: ADDRESS EQUITY ISSUES IN POLICING PRACTICES

The current focus on policing was sparked by high-profile cases that have called into question whether the Department’s practices evidence disparate treatment based on race or gender. Questions linger about whether race and/or gender play a role in whether NPD initiates and completes investigations of crimes, or complaints of police misconduct. The Public Safety Commission is charged with providing the City Council advice on how to address needs that police statistics reveal; by disaggregating this data by race and gender, the Commission will have the tools to monitor whether evidence of disparate treatment does, in fact, exist, and will be able to advise the City Council accordingly.

In addition, periodic reports from the police on citizen complaints should indicate the disposition of all closed cases, whether they are sustained, unfounded, unsubstantiated, or administratively closed (due to an inability to contact the complainant, for example). This will provide the Public Safety Commission and the City Council important insight into NPD’s work to follow up on and investigate crimes and citizen complaints.

Last, the composition of the Public Safety Commission should reflect these equity considerations as well, so as to ensure important voices are not missing from discussions of police practices.

PROPOSED AMENDMENT 4:

Section 2.30.040(i) (“Powers and Duties”) shall be amended to read as follows:

1. The public safety commission shall:
 - A. Review periodic reports prepared by the public safety department including general information, **disaggregated by race and gender**, regarding the number of citizen complaints about public safety services received during the reporting period and the ~~number~~ **disposition of citizen** complaints ~~sustained~~ **during the reporting period**.
 - B. Review periodic reports prepared by the public safety department to detect trends evident in Nome as portrayed through police statistics, **disaggregated by race and gender**, including general information regarding the number of sexual assault and domestic violence calls, status of sexual assault and domestic violence cases including status of victim follow-up, the number of public inebriation calls, the number of alcohol and drug abuse calls and the number of felony investigations. Advise the city council on programs addressing these data-based needs and recommend specific city action in response to identified needs.

PROPOSED AMENDMENT 5 – COMPOSITION:

Section 2.30.040(c) shall be amended to read as follows:

In making appointments, the mayor shall:

1. consider experience or involvement in public service activity; provided, however, that such experience or involvement shall not be a prerequisite for appointment.
2. attempt to have the membership composition reflect the cultural, **racial, and gender** makeup of the community.

ISSUE: ENSURE THE COMMISSION HAS THE SKILLS AND KNOWLEDGE TO BE AN EFFECTIVE ADVISORY BODY

Because this Public Safety Commission is envisioned as an all-volunteer, citizen commission (i.e., without specialized staff support from professionals with skills

and/or prior experience in relevant fields, such as law enforcement, victims' services, mental and behavioral health, sexual assault and/or domestic violence services), it will be important both to recruit volunteers with those skills, and to provide a basic level of training to Commission members.

As with the Museum and Library Commission, the Public Safety Commission should endeavor to include Nome residents with relevant backgrounds.⁶

PROPOSED AMENDMENT 6 – COMPOSITION:

Section 2.30.040(c) shall be amended to read as follows:

In making appointments, the mayor shall:

1. consider experience or involvement in public service activity, **including prior experience in law enforcement, victims' services or advocacy, sexual assault and/or domestic violence services, and mental or behavioral health**; provided, however, that such experience or involvement shall not be a prerequisite for appointment.

2. attempt to have the membership composition reflect the cultural makeup of the community.

PROPOSED AMENDMENT 7 – TRAINING:

Section 2.30.040 ("Public Safety Commission") shall be amended with the following addition:

(j) Training.

1. Within the first ninety (90) days of their appointment, Commission members shall be required to complete a training that shall include, at minimum:

- A. Ride-alongs with NPD on at least two shifts;
- B. The Alaska Open Meetings Act;
- C. Confidentiality, privacy and due process rights for officers and civilians;
- D. Rights of victims, criminal defendants, and targets of criminal investigation;
- E. Racial equity issues;
- F. Trauma-informed interview skills;
- G. NPD's Operations Procedure Manual

⁶ Section 2.30.030 ("Museum and Library Commission") of the Nome Code of Ordinances requires the mayor to give consideration to "past experience or involvement in museum or library activity" as well as to members of the Kegoayah Kozga Association when making appointments to the Museum and Library Commission.

2. This training will be conducted by NPD and/or qualified external trainers identified by NPD or the City Manager.

ISSUE: INSTILL PUBLIC CONFIDENCE IN HOW CITIZEN COMPLAINTS ARE HANDLED

In many local jurisdictions, as in Nome, citizen complaints about police are investigated by a law enforcement agency (often the same agency against which the complaint is lodged). Civilian-led investigations require staff with intensive training, and this may not be within the means of many localities. In such cases, a helpful role for a civilian advisory body is to review internal investigations of citizens' complaints to determine if the complaints are investigated appropriately, according to the police department's adopted procedures. The civilian body can determine that an investigation has been properly conducted, or can recommend a re-opening of the investigation, if it is evident that certain steps were not followed (such as, for example, a failure to interview identified witnesses, or insufficient attempts to contact a complainant). Whatever the outcome, civilian review of civilian complaints instills public confidence that complaints of alleged police misconduct are taken seriously.

PROPOSED AMENDMENT 8:

Section 2.30.040(i) ("Powers and Duties") shall be amended with the following addition:

G. Review completed investigations of complaints of police misconduct. Upon request of the complainant, Commission members may review completed investigations of complaints of police misconduct for adherence to the Nome Police Department Operations Procedures Manual, and may recommend a re-opening of investigations if findings show significant lapses of procedure. The Commission:

1. shall, in collaboration with the Nome Police Chief, devise a confidential means of reviewing investigation records.
2. shall not gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint.
3. shall, upon completion of the review, notify the complainant in writing about its conclusions.

Note that training would be helpful to ensure that these reviews are conducted competently and in alignment with the NPD's Operations Procedure Manual. Training needs are addressed more generally in Proposed Amendment 7, and should be kept in mind when considering this amendment.

Protection of confidential records is addressed in Proposed Amendment 2, which addresses the Public Safety Commission’s access to information, and should also be kept in mind when considering this amendment.

MINISTERIAL AMENDMENTS

In our review of the draft ordinance, a couple of items were flagged as needing clarification or clean-up in the text. The first is clarification of the “overlapping” terms of members. If the intention is to create staggered, rather than concurrent terms, then that structure will need to be created with the first set of appointments, some of which will need to be shorter than three years. Staggered terms will ensure the Commission retains knowledge and expertise as members term out and are replaced over time.

The second ministerial issue is ensuring that a quorum be at least a majority of members. With a nine-member commission, the quorum should be at least five.⁷ The current language indicates four, which may be a holdover from earlier drafts of the ordinance that envisioned a smaller commission.

PROPOSED AMENDMENT 9 – STAGGERED TERMS:

Section 2.30.040(d) shall be amended to read as follows:

Each member of the commission shall be appointed for a three-year term, **with the exception of original members, three of whom shall be appointed for a one-year term, three of whom shall be appointed for a two-year term, and three of whom shall be appointed for a three-year term.**

PROPOSED AMENDMENT 10 – QUORUM:

The first sentence of Section 2.30.040(f) shall be amended to read as follows:

~~Four~~ **Five** appointed members of the commission constitute a quorum for the conduct of business.

Policing power—which includes the power to take an individual’s liberty, and even their life—is the most serious power we, the people, give our government. Promoting transparency and public accountability is an important way to build a community’s trust in the police who take an oath to protect and serve it. By

⁷ For example, a quorum of at least five is indicated for the nine-member Museum and Library Commission, as detailed in Nome Code of Ordinances Section 2.30.030 (f).

adopting these amendments into O-19-02-02 and passing the ordinance, the City of Nome will be following in the footsteps of dozens of cities and localities across the United States that have built bridges between civilians and police through the creation of citizen bodies such as the proposed Public Safety Commission. By providing information, identifying needs, and offering recommendations, the Public Safety Commission will enhance the City Council's ability to address public safety issues, and bring new transparency to the work of NPD to keep Nome residents safe.

If you have any questions or need additional information, please feel free to contact me at tstampas@acluak.org or 907-263-2004. I thank you again for the opportunity to assist you in this endeavor.

Sincerely,



Triada Stampas
Policy Director

cc: Interim City Manager John Handeland
City Clerk Bryant Hammond
City Attorney Brooks Chandler