

# Citizens Research Council of Michigan

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## Detroit City Charter Revision

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On November 2, 1993, as provided in the 1974 charter, voters of the City of Detroit will determine whether a charter commission will be established to revise the current charter. This series is being financed in part by grants from Community Foundation for Southeastern Michigan, Hudson-Webber Foundation, and Matilda R. Wilson Fund, and NBD Bank.

**REPORT NO. 310-06 Sixth in a special series on Detroit City Charter Revision Issues AUGUST 1993**

### THE DETROIT BOARD OF POLICE COMMISSIONERS: HISTORICAL AND POLICY CONTEXT

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#### *Introduction*

*A major challenge for the 1970-1973 Detroit Charter Revision Commission was how to balance two fundamental and often competing principles concerning the accountability of the police department.*

*On the one hand, the Commission learned during long hours of hearings that an intense need existed for a police department which was responsive to the diverse people, interests, and values of Detroit. This need was expressed in terms of the importance of proper community influence on the policies and performance of the police department and more specifically in terms of the process for resolving citizen complaints fairly.*

*On the other hand, the Charter Revision Commission was confronted with the need to assure that supervisory control over the police department was vested securely in the mayor. This was seen as a way of clearly establishing the accountability of the mayor's office for an effective and equitable police department.*

*The Commission attempted to resolve its dilemma by creating a new police structure which provided for a five-member board of police commissioners, appointed by the mayor with council approval, to oversee the police department. The Charter Revision Commission also provided for a chief of police, appointed by the mayor, to administer the department. This new structure was actually a second attempt by the Charter Revision Commission to balance the supervisory control/citizen involvement dilemma, since an earlier charter revision proposal providing for a separate professional standards department was criticized widely.*

*When the voters of Detroit approved the final charter proposal on November 6, 1973, a form of civilian oversight that drew on historical precedent was merged with an innovative police accountability mechanism to give Detroit a unique position in American policing.*

*The purpose of this paper is to describe the characteristics which give the Detroit civilian oversight model this unique position. The objective here is not to evaluate the Detroit model, but rather to describe and define it in such a way that issues of effectiveness can be raised and discussed more clearly. The matter of evaluation is a task for the citizens of Detroit.*

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### Civilian Oversight and Civilian Review

Although frequently used interchangeably, the terms civilian oversight and civilian review have different meanings in the police literature and different operational implications.

Civilian oversight refers to the basic accountability of the police function of local government, and traces its conceptual origin to the philosophical underpinnings of American democracy. This basic accountability is manifested through the control of local police agencies by the executive level of local government, a structural control mechanism analogous to the President's control of the military at the federal level. The police literature is clear that the central issue concerning civilian oversight is not whether it should exist, but rather what structure it should take.

The two principal structures that civilian oversight in local policing have taken are the administrative model and the civilian involvement model. Under the administrative model, the head of the police department reports directly to the chief executive of local government (mayor, city manager), who is either elected, or appointed by an elected body. Civilian oversight is thus achieved by this direct reporting relationship to a civilian official.

Under the civilian involvement model, an additional civilian layer is inserted between the chief police official and the elected or appointed governmental official. The primary rationale for this additional layer is that it compensates for the limited attention that mayors or city managers often are forced to allocate to police concerns due to their other city-wide responsibilities. The history of American policing shows that most cities have tried both models at one time or another, and some have alternated between the two in periodic cycles. The most frequently cited stimulus for changing from one model to another is an experience with high level corruption.

Civilian review, however, has a narrower meaning, both conceptually and operationally. It refers to the process for detecting and adjudicating police misconduct within the police ranks, and is particularly concerned with the role of citizen complaints in that process. While there is conceptual linkage to civilian oversight, civilian review is more concerned with providing operational checks on internal police dis-

ciplinary systems through civilian participation in the administration of discipline, and through a citizen complaint process that offers easy access and equitable treatment for citizen grievances.

The literature on civilian review indicates that it is a far more recent issue than civilian oversight, and substantive policy debate about civilian review dates back only to the mid-1950s when Philadelphia created the first civilian review board in a major U.S. city. The succeeding years have witnessed considerable growth in the debate about civilian review, however, and the number of cities which presently have some form of civilian review has grown markedly. A national survey conducted in 1990 revealed that 30 of the 50 largest cities had civilian review mechanisms of some sort. The same survey also showed that half (15) of the cities with civilian review mechanisms established them since 1986.

The feature of the 1974 Detroit City Charter model that distinguishes it from all other models, is that it combines the most extensive elements of both civilian oversight and civilian review found anywhere in the United States.

### Charter Provisions

The specific duties of the five-member board of police commissioners are listed in Article 7-1103 of the Detroit City Charter, which states in part:

The board shall:

1. In consultation with the chief of police, and with the approval of the mayor, establish policies, rules and regulations;
2. Review and approve the departmental budget before its submission to the mayor;
3. Receive and resolve, as provided in this chapter, any complaint concerning the operation of the police department;
4. Act as final authority in imposing or reviewing discipline of employees of the department;
5. Make an annual report to the mayor, the city council, and the public of the department's activities during the previous year, including the handling of crime and complaints, and of future plans.

Additional language provides for a staff, to include a secretary and chief investigator, as a means of assisting the part-time board in fulfilling its duties (Article 7-1104), and for the appointment of a civilian director to head the police personnel division (Article 7-1110).

Of considerable importance to the role of the board is the charter language describing the authority and process for addressing both discipline and complaints. The charter provides the board with an approval role on all rules, regulations, and procedures concerning the conduct of department members (Article 7-1107). The same article also establishes the board's appellate role in resolving disciplinary matters and designates the board's disposition of such disciplinary matters as final.

Regarding complaints toward the department, the charter gives the board a major role in the reception, investigation, and resolution of citizen grievances (Article 7-1108). By vesting the complaint function in the board, the Charter Commission was attempting to assure the independence and impartiality that were seen as "Indispensable to the proper discharge of the complaint function..."

It is, of course, important to recognize that several factors beyond the literal charter language also significantly influence the implementation of the provisions for civilian oversight and civilian review. These other factors include: collective bargaining, and especially Act 312 requirements; interpretations of the board's role by the mayor, board and chief; the political and community stature of commissioners; and the interplay of personalities and organizational dynamics in addressing board issues.

### Historical Context

Detroit's experience with alternative approaches to the supervisory control/civilian involvement dilemma is reflective of a national pattern.

When Detroit was incorporated in 1802, peace and order were provided by *town* marshalls. As Detroit started to expand, a variety of policing methods including the use of constables, night watchmen, city watches, and militia periodically tended to the security needs of the city. These early policing efforts were loosely structured, very dependent on the co-

operation of the citizenry, and often the subject of public debate and occasional ridicule.

On February 28, 1865, the Michigan Legislature established the Metropolitan Police Commission and charged the commission with oversight of the newly created Detroit Police Department. A prominent feature of the new four-member commission was that it was appointed by and accountable to the governor of the state. Such structures were common in the mid-19th century and their rationale was the need to keep police policy decisions out of local politics, which at the time was riddled with corruption and political chicanery.

In 1918, Detroit adopted a new city charter in which the leadership structure of the police department was changed to a mayor-appointed, single police commissioner who served at the pleasure of the mayor. This change in Detroit was part of a national "home rule" and municipal reform movement that was underway in many local governments in the early 20th century. The 1918 charter emphasized the "administrative structure" model for addressing the supervisory control/civilian involvement issue. This model was operative until the voters approved the 1973 charter revisions and the new board of police commissioner provisions were implemented on July 1, 1974.

### Implementation of Charter Provisions

While a city charter prescribes a set of required actions by city government, the manner and spirit of those actions *can* vary considerably, depending on factors external to the charter. Therefore, whether the charter provisions regarding the board of police commissioners have been implemented as fully as the charter framers and voters intended is an important question with an elusive answer. One must look at the practices of implementation, as well as the nature of actions taken by the board of police commissioners in order to render some judgment on this matter. Given the complexity of this task, it is too great for the confines of this brief paper. There are some indicators, however, which might offer a starting point.

An example relating to the implementation of the board's complaint function is illustrative of the difficulty in making the transition from charter language provision to operational reality. In March 1977, nearly three years after the charter took effect, a police

officer who was contacted by a board investigator regarding a citizen complaint refused to cooperate or provide any information whatsoever to the investigator on the grounds that the police collective bargaining agreement did not contain any provision for investigations by board staff. This challenge resulted in considerable discussion of possible alternative actions by the city for several years, and was not finally resolved until an arbitration award in 1979 ordered that a board resolution containing rules governing citizen complaints be incorporated into the union contract.

An example relating to the general oversight function of the board, and more specifically, to the board's access to police department information, is also illustrative of the difficulty of implementing the new charter provisions. During the first four years of the board's existence, there was considerable disagreement between the board and the chief regarding the extent to which the board staff could gather information needed by the board from units and individuals within the police department. This disagreement did not get substantially resolved until the mayor issued an executive order which established the working parameters and procedures for information gathering by the board.

Discerning whether the actions taken by the board in its 20-year history are commensurate with the charter provisions for civilian oversight is likewise very difficult. The task of trying to determine whether board actions are the result of a "pro forma," endorsing process, or a deliberative, policy shaping process, or some combination of the two, is a complex one. In all cases, the literal language of the charter can be followed, but only in the more deliberative policy process does the involvement of the board give meaning and substance to civilian oversight.

There are several examples on record where the board apparently had a significant policy shaping role on important issues. These include the police department's affirmative action policy and its subsequent legal challenges, the police department's role in a national police intelligence network accused of inappropriate use of intelligence methods, the oversight of the "Red Squad Files" legal settlement, and the consideration of personnel realignments due to budget cut-backs. The board also exercised its disciplinary review function on at least one dramatic occasion when it reversed a police chief's order to suspend without

pay several police officers while criminal charges were pending against them. The board placed the officers on restricted duty pending the resolution of criminal charges.

On the other hand, one can question the vigilance of the board regarding other important oversight issues given the problems experienced with the police department's 'secret service' fund, the indictment and conviction of a police chief for theft of department money, and the problem surrounding the purchase and use of department aircraft. Whether these are isolated examples or part of a larger pattern of board abdication of charter responsibilities, or they are examples of anything other than unfortunate events, remains an open question.

### **Criteria for Assessment**

There have been no independent evaluations of any of the civilian oversight or civilian review mechanisms anywhere in the United States. Assessment of the Detroit experience under the 1974 charter revisions is limited to selected aspects of civilian oversight or civilian review for selected time periods.

Given this near absence of assessment information, the forthcoming charter review process will need to rely on other forms of information when considering current charter provisions. One noted police scholar (Richard Terrill), who has specialized in civilian review and civilian oversight issues, has suggested that five factors are crucial to the success or failure of attempts to balance supervisory control and civilian involvement in police accountability structures:

1. The nature of political support;
2. The level of police opposition;
3. The degree of citizen interest;
4. The legal standing;
5. The extent of independence.

This brief paper has provided a starting point concerning information about each of these factors. Perhaps the gathering of additional information on these factors will provide insight to resolving the supervisory control/civilian involvement dilemma for the future.

### **Alternatives**

Once some judgment is made concerning the effectiveness of current charter provisions, several alter-

native courses of action are available, depending on the nature of the judgment reached. These alternatives can be grouped into four broad categories of action, with several possible variations available in each category:

**1. No change in charter provisions.** This alternative would affirm the effectiveness of present provisions. One possible variation of this alternative is to maintain present provisions, but suggest (via charter review process) that the board be made more (or less) active through the selection of commissioners and its effect on the working relationship of the mayor, board, and police chief. In essence this would be a stylistic adaptation without a change in charter language.

**2. Eliminate the board of police commissioners.** This alternative would be commensurate with a judgment that the board had been at worst a failure, or at best irrelevant. Some other accountability model would have to be proposed as a charter change, and the model most compatible with this alternative likely would be the “administrative structure” model. In essence this alternative would resemble a return to the supervisory control/civilian involvement model provided in the 1918 charter.

**3. Modify the duties of the board of police commissioners.** This alternative would flow from a conclusion that the basic structure of the board of police commissioners is correct, but that some “fine tuning” to either strengthen or reduce the board’s role is needed to enhance effectiveness. Several modifications are possible, but the most likely ones are:

**a. Strengthen and clarify the reporting requirements of the police chief to the board.** It is at least arguable that present charter provisions require the police chief to have dual reporting requirements (mayor and board), but since the mayor is the appointing authority for the chief, that reporting line takes precedence. The reasoning under this alternative is that strengthening the reporting line from the chief to the board would clarify the lines of policy authority and decision responsibility.

**b. Strengthen the board’s role in the selection and appointment of the police chief.** This alternative could range from a role in selecting and recommending candidates to the mayor, to giving the board charter responsibility for appointment and removal of the police chief. This alternative would diminish

the supervisory control of the mayor somewhat, but enhance the citizen involvement role in the police department.

**c. Reduce the board’s oversight responsibilities and make it more of an advisory body.** This alternative, in essence, would place more emphasis on the informal influence of a civilian board, and diminish their direct oversight and review duties. This would also result in a leadership model more closely resembling the “administrative structure” model, inasmuch as the citizen involvement role would lack decision authority.

**4. Select police commissioners by popular election rather than mayoral appointment.** This alternative has the potential for providing an electoral check on the mayor and police chief, and would insert an overtly political character into the civilian oversight and review mechanisms of the police department. Whether there would be a qualitative improvement in the supervisory control/civilian involvement balance is speculative at best.

Other alternatives and modifications are certainly plausible, but given the deliberation that went into the present charter provisions, and given the historical and policy context of those provisions over the past 20 years, these choices represent the most likely array of alternatives regarding the future of police accountability in Detroit.

### Conclusion

Designing and implementing methods for directing a police department with just the proper balance of supervisory control and citizen involvement is not easy work. The history of American policing is replete with examples testifying to the complexity of the task. In 1974, the voters of Detroit embarked on a unique and innovative course of action by establishing a civilian board of police commissioners with charter mandated responsibilities for civilian oversight and civilian review. Now, 20 years later, the voters of Detroit are presented with an opportunity to assess that course of action and decide on its future applicability.

This paper has provided a starting point intended to assist Detroiters with that important decision. The historical and policy context of the 1974 charter provisions have been described, several criteria for

assessing the implementation and effectiveness of the board of police commissioners have been suggested, and possible alternatives regarding the board's future role have been presented.

Now the real work of local democratic government begins.

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