

THE GENEVA CITY COUNCIL

JOURNAL OF PROCEEDINGS

SPECIAL COUNCIL MEETING

April 20, 2022 – 6:00 PM

Cornell AgriTech Campus, Jordan Hall
630 W. North Street
Geneva, NY 14456

Presiding – Steve Valentino, Mayor

1. ROLL CALL

Present: Clr. Regan, Clr. Gaglianese, Clr. Burrall, Clr. Pealer, Clr. Camera, Clr. Salamendra, Clr. Salone, and Clr. Noone

2. EXECUTIVE SESSION

Clr. Camera asked to make a statement before council moved to executive session:

As a standing committee made up of citizens of the same governmental jurisdiction the creation of a Police Review Board (PRB) is perfectly in line with the Grand Jury law embedded in the 5th Amendment of the US Constitution. The grand jury law allows a federal entity to prefer charges against a person for offenses based on a review of the evidence by a majority of the grand jury made up of regular citizens.

UNITED STATES CONSTITUTION 5th Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...”

NEW YORK STATE CONSTITUTION Article 1, Section 6 “No person shall be held to answer for a capital or otherwise infamous crime...unless on indictment of a grand jury...”

(NYS Grand Juror’s Handbook, 2021)

“Your mission is two-fold: on the one hand, to use your power as grand jurors to investigate crimes and hand up an indictment when sufficient evidence exists to do so; on the other, when the evidence is insufficient, to protect people from unfounded criminal accusations by not handing up an indictment.”

So, what is really different between a grand jury type mechanism and a police review board in principle? Not much. What is essential is that the investigation and deliberations are held in confidence, are conducted by regular citizens of the jurisdiction and then an opinion is handed back to the governmental entity to pursue. In the case of Geneva’s PRB, the police chief takes the recommendation and combines it with her own information and evidence and then comes to a final conclusion. It is too simple.

In my opinion, Judge Doran's decision on April 11th, 2022 potentially proved two things:

- It showed his ignorance of the spirit of Grand Jury process and its fundamental foundation in the US Constitution to assure that justice is preserved or protected.
- And/or he wrote an opinion and finding that is a 26-page rationalization for his decision to suggest tons of technical research and legal analysis that makes sense and justifies striking the law.

It does not. This ruling is founded on biases that he freely admits to and, to put it mildly, his insensitivity as a young person to the racial inequalities that existed in the past and still persist to this day. If he had wanted to add one more page to his tome of 26-pages of excuses he could have done a little google research and he would have found that complaints involving people of color are less likely to be heard, processed, and adjudicated, than those filed by white people and therefore makes the lack of a PRB the perpetuation of racism and intimidation for the weaker and disenfranchised among us.

He could even have taken into account the human rights complaint lodged by a City of Geneva policeman in March 2022 over three weeks before he issued his ruling.

FLTimes headline, March 19th, **At Odds with the City, GPD**, in which a white police officer files a human rights complaint against the City.

Judge Doran may not be responsible for systemic or past acts of racism that have flowed in Ontario County and the going back to the founding of our country, but he is responsible for the future and his potential impact on it.

And from what I can tell, this decision, perpetuates injustice, racism, and bullying and would best be assuaged by either his retraction of the ruling and/or his resignation.

ACTION TAKEN by Clr. Gaglianese; seconded by Clr. Salone

MOVED THAT council adjourn to executive session at 6:07pm to discuss proposed, pending or current litigation

MOTION CARRIED UNANIMOUSLY

ACTION TAKEN by Clr. Gaglianese; seconded by Clr. Salone

MOVED THAT council leave executive session at 7:01pm

MOTION CARRIED UNANIMOUSLY

3. **DEFEATED RESOLUTION AUTHORIZING AN APPEAL FROM APRIL 11, 2022 DECISION REGARDING THE POLICE REVIEW BOARD**

Mayor Valentino presented the following resolution:

WHEREAS, promoting positive police community relations is a goal of the City of Geneva, and

WHEREAS, in furtherance of said goal, the Geneva City Council adopted Local Law 1-2021 creating a Police Review Board, and

WHEREAS, an Action was commenced by Council 82 of the New York State Law Enforcement Officers Union in Ontario County Supreme Court on Jun 1, 2021, challenging Local Law 1-2021, in which it asked the Court to determine Local Law 1-2021 to be invalid, void, and unenforceable and sought a permanent injunction restraining, enjoining, and prohibiting the City from implementing the Local Law and putting it into effect, and

WHEREAS, Gibson, Dunn & Crutcher LLP, special counsel, appeared in said Action on behalf of the City of Geneva, and

WHEREAS, Motions were filed in said Action by all parties, and

WHEREAS, Supreme Court Justice Craig J. Doran issued a decision on April 11, 2022 in the Action brought by Council 82, determining that Local Law 1-2021 was invalid, void, and unenforceable and permanently enjoining, restraining, and prohibiting the City from implementing Local Law 1-2021 and putting it into effect, and

WHEREAS, Gibson, Dunn & Crutcher LLP, has advised the Geneva City Council concerning the details of the April 11, 2022 decision and the possibility of appealing the decision to the New York State Supreme Court, Appellate Division, Fourth Department.

NOW, THEREFORE BE IT RESOLVED THAT Gibson, Dunn & Crutcher LLP, is authorized to file an appeal with the New York State Supreme Court, Appellate Division, Fourth Department, from the April 11, 2022 Decision in the Action brought in Ontario County Supreme Court by Council 82 and to apply for a stay of the April 11, 2022 decision pending determination of the Appeal.

Clr. Pealer asked to clarify that if councilors vote “yay”, then the appeal will move forward, and if they vote “nay”, it will not move forward.

Clr. Salamendra said that tonight she is not speaking as an activist or someone who supports the Police Review Board, but she is speaking in the position of someone whose job it is to protect the city. She said she is worried that a decision to not appeal the judge’s decisions will open the city to increased liability and decrease public trust in city government and the police. She referred to a human rights complaint filed by Sgt. Nolin of the Geneva Police Department and the case against Jack Montisanto saying that a Police Review Board (PRB) has a way of decreasing the amount of money the city spends on lawsuits related to Geneva Police Department misconduct. She said that if we stop this process now, we are giving people with potential lawsuits the ability to point to this day as the day where city officials refused to take police misconduct seriously. She noted that it will cost us much more than the \$120 spent by the PRB in the last nine months. She said that Genevans are ready and waiting to share their complaints with the PRB. She said that photos were recently shared with her from within the Police Department on a computer used by multiple officers. She said she is afraid that if council does not appeal Judge Doran’s decision and let the

process play out, this kind of behavior on the part of the GPD will have a chilling effect. She said she feels everyone can agree that what we want is to improve relations with the GPD and the community. She reminded council of the hours of public comment they heard when they voted to pass the local law for the PRB. She asked council not to turn their backs on the people or the law they all wrote together.

Clr. Gaglianese said I don't think anyone would argue that Geneva's diversity is one of our greatest assets. People from different walks of life, different political views, different visions for Geneva's future. This diversity is what makes Geneva the city we all know and love. I was elected onto council as an At-Large councilor. That means that I am tasked with the difficult role of representing ALL of the people of Geneva. Making decisions as a councilor that make everyone in Geneva happy is not only difficult. Let's be honest- it is utterly impossible. With each vote, every one of us up here is going against what some of our constituents want. That is just the nature of government. For me, the decision whether to appeal or not has little to do with Supreme Justice Doran's ruling that deemed Local Law 1-2021 invalid. In fact, his ruling only echoed the warnings we received from John Corcoran with Hancock and Estabrook, as well as that of our own city attorney, Emil Bove- who both went into great lengths to caution us that the way we created the language to this law would be challenged in the end. My vote tonight is based on the same thing it has been since the beginning of this entire process. That is- that the overwhelming majority of my constituents have opposed this from the start. During a global pandemic, when we couldn't even hold in person meetings, this council experienced civic engagement from our community in ways that I don't believe we have truly ever seen before. I would love to know if there has ever before been a public hearing in the city with over 100 participants giving public comment. People navigated technology, and learned how to use ZOOM- all because they wanted to be heard. And- I just want to say- to the Genevans who spoke in support of this PRB from the start- just because I didn't vote for this PRB does not mean I wasn't listening to you. As I said, my role- as well as Clr. Noone's role- is to represent the whole population of Geneva. And when the whole population has differing views, I base my vote on what the majority wants- because that is what a councilors decision must be based on. Not personal agendas, not the will of a small subset, not demands or ultimatums. At the public hearing, the overwhelming majority- over 60%- of participants spoke in opposition to the PRB. At that hearing, a petition-read by Councilor Noone- and signed by almost four hundred Geneva residents combined from all 6 wards and taxpayers, asked us to dismiss the local law "in it's entirety". Then, when the stronghold of 5 on council ignored the majority of feedback and still passed the local law, Genevans from both sides of the aisle- Democrats and Republicans came together to raise the funds needed to obtain their own legal representation- as they felt they were not being heard or represented by their councilor. In just a very short time, over 575 registered voters combined from all 6 wards in our city signed their name to a petition asking for the local law establishing a PRB to be put to a vote- because they wanted their chance to have their voices heard. I don't know if any of the other councilors have looked at all of the signatures on that petition, but it was pretty powerful. To see page after page of Genevans, young and old- left right and center- all willing to put their name out there for a chance to be heard. Almost 600 voters in this city united to tell us that we didn't listen to them. We did those people a great disservice- and its time to make that right. My vote tonight doesn't erase the time, dedication and hard work that many people put into the local law and the PRB. I would like to express sincere appreciation to all of those who got involved throughout this process. Your volunteerism is noble, and I thank you all for that. But it should have never gotten this far. The concept of

transparency and accountability not just for our police department but city-wide is something that we all must prioritize. I believe we can continue to build trust between GPD and the community in many ways, and I look forward to collaborating with all Geneva stakeholders- to include the African American Men's Association and the NAACP- two groups which were not represented on the PRB. In fact, the NAACP's nominations for the PRB were shot down entirely. As a side note- I have never seen public safety in Geneva take a back seat to politics and personal agendas, as I have the last 18 plus months and have stated from the get-go that this approach and process was flawed. This drain and strain approach would be reckless and have consequences and, in the end, we would have a price to pay. This law has made it hard to attract lateral transfer police officers to backfill empty positions we currently have vacant at our police department and because of this we have put officers as well as general public at risk. Doing more with less isn't working and long term we cannot continue operate like this. In closing, appealing this ruling would not guarantee us moving forward without more legal challenges and obstacles. Yes, I do know that Gibson Dunn and Crutcher will continue handling this case pro-bono and some will say we have nothing to lose, others will state this legal cycle could go on for months even years and in the end we would get nothing but a more diluted version of the diluted version we already have created. With this being said I am a No vote to this appeal.

Clr. Salone said that he is here to represent residents of the 6th Ward. He said that when he learned of the Judge's ruling, he went out and canvassed his ward and was able to hear from 313 residents, noting that this was three times the number of people who voted in the last election. He said that 129 people were in favor of the appeal, and 184 were against the appeal. Based on these results, he will be voting no for the appeal. He said he fully supports the men and women in blue who are dedicated to Geneva. He referred to the incident involving Officer Montisanto saying that the police chief did not hesitate to act, and did what he was supposed to do by law. He believes the chief will continue to serve our city this way. He mentioned incidents where current councilors were found in violation of tenants of our City's Code of Ethics, and they were not held accountable. He said he believes in accountability for every person in every department, but it has to start at the top. He said he believes our citizens are fed up with the breakdown of moral and ethics in our city and across the country. He said that council needs to listen, respect, and agree to disagree. He thanked the people of his ward saying that he is honored to be their representative and will continue to represent the people of his ward.

Clr. Regan said what we are voting on tonight is NOT the Police Review Board. It's not a vote on the Local Law 1-2021. We already voted on that – we approved it. What we are voting on tonight is whether to give this legislation its due. Whether to honor the work of it – our work together, probably the best work we have done – the work and of a solid diverse group of Geneva's citizens, and the work of a volunteer board that has met diligently and responsibly for over a year. We are voting on a legitimate common legal step, to give this huge effort a rightful chance. And to give the city a law and board to show what indeed it can accomplish. For this reason, I am most interested in the remarks of two Councilors. One is Councilor Salone, who told us publicly that he would support the PRB. You have the opportunity to honor this work and the democratic process. I am interested in his comments tonight. The second is Councilor at large Anthony Noone. Though he voted against this law, he was strangely enough made the council liaison to the committee. He has reported each month on their numerous meetings and hard work. I would like to hear his impressions of their professionalism, of their worth at a shot in continuing their work. To my

colleagues who claim we should not put more time into this – I ask them, how much time have you put into this lawsuit so far? This has been solely in the hands of pro bono lawyers. We have not been asked for anything on this path, except an occasional meeting to update us on status. This has been handled by a group of high-profile pro bono attorneys, not by City Council. Another point here that needs to be clear to the public – we are not paying for this appeal. There will surely be some interaction with our own attorneys, but tax payers are not being asked to fund an appeal – just as they did not pay for the primary legal services that came with crafting this law. As for the need of a body like this –When I hear from people who do not believe this is needed, that it is fabricated from national stories not relevant in our small city – I fear we ignore far too many stories—far too much of what is reality for others who live here too. There are well known cases that have occurred in over recent years that I have known of course. But in my first two years being on Council I had two cases that came to me – two cases that needed a PRB, but somehow found my number instead when one did not exist. One of those cases involved a domestic abuse situation, where an off-duty Geneva officer attacked a woman in neighboring city. The Chief investigated this case that came to home from that other City's police department -- but chose to interview the alleged offender, and not speak to the victim herself, or any witnesses. Unfortunately, the abuse continued. That was when this woman spoke to me. Serving in pre-PRB mode, I worked with others to be sure this case was properly heard. Had we had a PRB in place, without doubt the board would have questioned the original investigation that did not include interviews with the victim or witnesses. It could have prevented the continuing attack, and the danger all of Geneva faced having an officer with the propensity to beat a girlfriend walking our streets with power and a gun at his hip. This is a dramatic and worse case example, but a clear situation where the PRB would have made a difference. Still, I see the PRB primarily as a tool of better understanding – between citizens and the police -- and a trusted place for people with legitimate concern or complaints to go to. For all these reasons – to allow the city to follow through on passed legislation through a legitimate well established legal procedure, to honor the work that preceded its passage, to let the City see this board we formed together in action, and in recognition of the actual need for this in Geneva – I will vote in favor of seeking an appeal on Judge Doran's ruling.

Clr. Camera said that he feels the judge's decision was tainted based on his background and orientation, noting that he even stated he was connected to people in the law enforcement community. He said he feels that makes the judge's ruling biased. He wondered why the judge did not take into consideration the event of March 20th where an officer said he was being harassed and not supported by the Geneva Police Department and also what just happened at the county police department. He said that the county established a 209 Committee to handle the matter at the county level. He questioned why Judge Doran wouldn't think a PRB would be useful. Clr. Camera said that he does not personally need to be oppressed or feel bullied to want a PRB, and he is concerned for people who are.

Clr. Burrall compared requesting an appeal to getting a second opinion from a doctor when a person receives a diagnosis that is life changing. He said he feels there is no harm in requesting a second opinion or appealing the judge's decision. He said at the advice of legal counsel, he will vote in favor of an appeal.

Clr. Noone said that for the past 18 months he has taken part as the council liaison to the PRB, noting that they ran their meetings more efficiently than this council and should be applauded for their work. He said he never questioned their organization, professionalism or determination to do what's right. He said he even attended one of their trainings, which he found interesting and enlightening. He said that tonight's vote is not about the PRB individuals, but about the law itself that created the board. He said he spoke to a resident who encouraged him to appeal the decision, and he said that Chief Passalacqua's name came up in the conversation. He said that he has never questioned the chief's integrity and his determination to do what is right and to stand by his people when they do the right thing, and to stand against those who do wrong. He said the person he spoke to agreed that the PRB should not be put in place because of Chief Passalacqua or the current GPD staff, but for any future officers we may have who do not have the integrity of our current chief. He said he feels we need to be proactive in addressing police reform and not reactive, and this will not be the be all, end all if council does not appeal the recent decision. He said that misinformation is causing division in our city, noting that the attorney they spoke to tonight said that they can put a new local law into effect if they choose not to appeal. Clr. Noone said that council was warned eighteen months ago by their other law firm that we would come to this point, but some councilors found a firm to tell them what they wanted to hear. He said he would like to go back to the beginning to get a law that will stand up, such as the one in Albany that was accepted by the police unions. He said he agrees that everyone needs to be held accountable, and he would like to see a law drafted collectively with the police chief and bargaining units that will bring people together rather than causing division.

Mayor Valentino said that there are important things about accountability, and he himself had to correct some issues after he was found in violation of an ethics tenant. He referred to July of 2020 when council was in their first year, and 7 resolutions came before them without going through staff and legal to see they were worded properly and met all requirements. He said that when council was provided legal counsel based on a local law that was copied and pasted from the Rochester local law, they were told there were items that would cause issues, but council chose not to listen to internal or external counsel when making adjustments. He said that he voted in favor of the local law to remain on the prevailing side to be able to bring this back up again to make adjustments.

Clr. Salamendra said that council rewrote the law when the lawyers said it would not work.

Clr. Pealer said that the important thing to do is keep track of the number of people who speak to council, noting that the majority were against it. He said it is important to know that your councilors understand what is before them. He said he believes crime touches everyone, and he supports police for what they do every day. He said in 1999 he was held at knife point and mugged outside Madison Square Garden, and by chance a Police Officer walking the beat approached, scaring off the mugger. In 2004 he was stopped in Grand Central Station by Metro PD and accused of being an Arab Terrorist and profiled. He was held for over 12 hours in a holding cell. He had to spend \$1500 in legal fees for doing something legal. He understands that police can overextend themselves. He said that council had an opportunity to do this right as PRB's require buy-in or support by the police, but we ended up with division. He said that horrible things were said about our police officers. He said he mostly agrees with Judge Doran's decision, but he disagrees that this was a thinly veiled attempt at taking shots at our Police Unions. He thinks this was a very direct attack. He thanked the volunteers and offered an apology to those who signed the

petition for referendum as council ignored it on the advice of their legal team, and council should have listened to the public.

ACTION TAKEN by Clr. Pealer; seconded by Clr. Gaglianese

MOVED THAT this resolution be approved

ROLL CALL VOTE: Aye –Clr. Salamendra, Clr. Burrall, Clr. Camera, and Clr. Regan

**Nay – Clr. Pealer, Mayor Valentino, Clr. Gaglianese, Clr. Noone, and
Clr. Salone**

MOTION DEFEATED

4. ADJOURNMENT

ACTION TAKEN by Clr. Gaglianese; seconded by Clr. Salone

MOVED THAT the meeting be adjourned at 7:50pm

MOTION CARRIED UNANIMOUSLY

Lori Guinan

City Clerk