



# OFFICE OF THE CITY CLERK

BIANCA L. TIRADO, CITY CLERK

## HEALTH & PUBLIC SAFETY

November 20, 2024, 7:00 P.M.

Committee Members Present:

Rachel Tomas Morgan, Troy Warner, Dr. Oliver Davis, Karen White, Frank Spesia, Savino Rivera

Others Present:

Bianca L. Tirado, Matthew Neal, Talia Thornton, Bob Palmer, James Luk, Canneth Lee, Ophelia Gooden-Rodgers, Sharon McBride\*, Sherry Bolden-Simpson, Sheila Niezgodski\*

Agenda:

Introductory Comments from the Chair

Update and Presentation by Council Attorney Bob Palmer: House Act No. 1016 and Indiana Codes Pertaining to and Related to Establishing a Police Merit System and Police Merit Board under State Statutes

Questions from Committee Members and Council Members

Members marked with an asterisk (\*) are in virtual attendance.

**Please note the attached link for the meeting recording:**

<https://docs.southbendin.gov/WebLink/browse.aspx?dbid=0&mediaid=387823>

**Please note the attached link for the presentation:**

<https://docs.southbendin.gov/WebLink/0/doc/387825/Page1.aspx>

Committee Chair Rachel Tomas Morgan called to order the Health & Public Safety Committee meeting at 7:00 p.m.

Committee Chair Rachel Tomas Morgan welcomed attendees to the Health & Public Safety Committee Meeting, emphasizing its informational purpose: to provide an update and understanding of state statutes regarding establishing a merit system and board. This meeting aims to prepare committee and council members for deliberations on Bill 65-24 for the

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November 25, 2024 hearing.

Committee Chair Rachel Tomas Morgan stated only questions pertaining to tonight's agenda item and presentation from committee and council members will be entertained and answered by our Council Attorney, who will be the presenter, and any remaining time will be open to the public for any questions. She further stated that they will not be able to entertain any questions about Bill 65-24 because it has not yet been presented to the Committee and is, therefore, premature under the proceedings for the standing committee.

Committee Chair Rachel Tomas Morgan explained her intention to have this informational meeting, separate from Monday's scheduled hearing, to give everyone time to consider the information provided and to have the rest of the week to circle back with Attorney Palmer, and anyone else, with any additional questions or need for clarification. She invited people to contact Council Attorney Bob Palmer at [bpalmer@southbendin.gov](mailto:bpalmer@southbendin.gov).

Committee Chair Rachel Tomas Morgan reminded the public that the second reading, committee, public hearing, and third reading for Bill No. 65-24 was set at the November 13th Council meeting for Monday, November 25, and that there will be a public comment period for Bill 65-24 on November 25th during the HPS Committee and Committee of the Whole.

Council Attorney Bob Palmer will present tonight, focusing solely on state statutes. Committee and council members may ask two questions each, with committee members going first. If time permits after their questions, the public may also ask statute-related questions. The meeting is scheduled from seven to eight (7-8) pm.

Committee Chair Tomas Morgan reminded attendees to maintain respect and decorum, noting that disruptions would not be tolerated. Participants were encouraged to contact Attorney Palmer at [bpalmer@southbendin.gov](mailto:bpalmer@southbendin.gov) for follow-up questions after the meeting.

Committee Vice-Chair Dr. Oliver Davis proposed amending the meeting agenda to include public comment after the committee's discussion.

Bob Palmer, Council Attorney, with offices on the 4<sup>th</sup> floor of the County-City Building, clarified that the agenda could be adjusted to include a matter not on the agenda to allow public comment on the topic of the state statutes.

Committee Chair Rachel Tomas Morgan questioned whether this motion was even necessary and reiterated her intention, stated in her opening comments, to use any remaining time after committee and council questions to allow the public to ask questions regarding today's presentation topic and that questions from the public must be limited to the state statutes only.

Committee Vice-Chair Dr. Davis expressed that he wanted the public to have an opportunity to comment regardless of when the committee and council concluded their discussion.

Bob Palmer cautioned that extending the meeting beyond the posted 7-8 PM timeframe could potentially violate open-door law requirements.

Committee Chair Tomas Morgan acknowledged the time constraints and emphasized the need to



prioritize questions from committee and council members to ensure a thorough discussion of the presentation.

Committee member Karen White requested clarification on the motion.

Committee Vice-Chair Dr. Davis proposed reserving the final fifteen (15) minutes of the meeting for public questions.

Committee Chair Tomas Morgan responded that she did not want to limit the time needed for committee and council members to address their questions regarding the presentation fully but that the committee and council could be aware of the time to move to questions from the public. She also pointed out that the amount of time just spent on this motion could have been additional time the public would have had for questions

Committee Chair Dr. Davis motioned to amend the agenda to allow the last fifteen minutes of the meeting to be reserved for questions from the public, which was seconded by committee member White and carried by a vote of six (ayes) with Committee member Troy Warner expressing confusion with the theatrics of this motion.

Committee Chair Rachel Tomas Morgan - <i>Aye</i>	Committee Vice Chair Dr. Oliver Davis – <i>Aye</i>
Committee Member Troy Warner - <i>Aye</i>	Committee Member Karen White - <i>Aye</i>
Citizen Member Savino Rivera - <i>Aye</i>	Citizen Member Frank Spesia - <i>Aye</i>

Bob Palmer, Council Attorney, with offices on the 4<sup>th</sup> floor of the County-City building, explained that the presentation aims to inform the council and public about the new Indiana Statutory Police Merit Board System. Previously, Indiana law allowed cities and towns the authority to establish merit systems for police, fire, or other employees. However, recent legislation passed in 2024 encourages cities and towns to adopt a standardized merit system specifically for police and fire departments, making it the norm statewide. Bob Palmer highlighted the distinction between the pre-2023 statute, which broadly permitted merit systems, and the updated 2024 statutes, which provide four (4) clear options for establishing such systems. Currently, South Bend’s police department operates under the Board of Public Safety, which consists of five civilian members appointed by the Mayor. This board oversees appointments, promotions, discipline, and policy matters related to the police department.

The Common Council, South Bend Police Department (SBPD), and South Bend Fire Department (SBFD) have four (4) options: (1) take no action, (2) establish a merit system via ordinance or resolution under the new state statute, (3) reject a merit system, or (4) establish a merit system under the existing state statute. Each option guides the process of adopting or rejecting a merit framework. Option One (1): Do nothing. If no action is taken to establish or reject a merit system by ordinance or resolution, and no majority vote by active department members occurs, the state statute automatically establishes a merit system effective January 1, 2025. This system includes rules set by the Indiana legislature and a mandatory five-member (5) Merit Commission with two appointments from the Mayor, one from the council, and two from active department members. Option Two (2): Pass an ordinance or resolution establishing a merit system. To establish a merit system, the Common Council must pass an ordinance or resolution, which must also be approved



by a majority of active department members, who must be given at least three (3) weeks' notice before voting. A five-member (5) Merit Commission, with two appointments from the mayor, one from the council, and two from a vote of active department members, oversees mandatory and locally established rules. Option Three (3): Pass ordinance or resolution rejecting the establishment of any merit system. Rejecting a merit system requires the Common Council to pass an ordinance or resolution, which must also be approved by a majority of active department members after at least three (3) weeks' notice. This keeps the current system in place, and another proposal cannot be voted on for one (1) year if the merit system is rejected. Option Four (4): Pass ordinance establishing merit system under existing state statute. Option four (4) establishes a merit system under a modified approach, without requiring a vote by active members or specific political party representation. It mandates that at least one-third (1/3) of the merit commission must be elected by active department members, and the medical director must provide written explanations for actions taken against certified employees.

Committee Vice-Chair Dr. Davis asked if our parliamentarian understood the rationale behind cities like Greenfield and Brownsburg rejecting the merit system.

Bob Palmer did not have an opportunity to speak with their officials, but assumed the active members of the police department did not want to have a merit system even though they could have forced it if they wanted to.

Committee Vice-Chair Dr. Davis asked our parliamentarian to reach out to the legal representatives of Greenfield and Brownsburg prior to the November 25, 2024 meeting to understand the rationale behind their decision. He also asked for clarification on option four (4) regarding committee members elected by SBPD.

Bob Palmer stated that under option 4, members elected by the SBPD are not required to vote on the existence of the Merit Board but are required to elect new members to the commission.

Citizen Member Frank Spesia inquired about the differences between the police and fire department Merit Board system.

Bob Palmer stated in the event both SBPD and SBFD establish a merit system, there would be a separate merit system for each with each department electing their own representatives. Furthermore, it was his understanding that SBFD has decided to pursue the mandatory state merit system.

Committee Member Karen White asked for clarification regarding which options require a vote by active members of SBPD.

Bob Palmer stated all options except option four (4) must be put up to a vote by active members of SBPD.

Committee Member White inquired about the timeline of the two (2) different statutes.

Bob Palmer stated if an ordinance is not passed under the prior statute by December 31, 2024 the state mandated system will come into play. Under the new statutory scheme, the ordinance would have to be passed by the Council and SBPD would have to vote on it not less than three (3)



weeks after passage by the Council.

Committee Member Troy Warner questioned what would happen if the Council and SBPD voted differently.

Bob Palmer stated that if the Council and SBPD vote differently, it results in the state model, unless option four (4) is chosen where the Council passes the merit system under the prior law then SBPD does not have to vote. For further context, it is the general understanding that the new statutory scheme was enacted primarily for the benefit of firefighters.

Committee Member Warner inquired about the differences between subsection seventeen (17) regarding statutory disciplinary action and the current disciplinary matrix employed by the South Bend Board of Public Safety (PBS). Committee member Warner also stated that the statute describes disciplinary action differently than the matrix, which suggests an inability to retain the disciplinary matrix under the state model.

Bob Palmer agreed with that view and added if the matrix is to be kept then it would have to be done under the prior statute with option four (4).

Committee Chair Tomas Morgan asked about state legislature involvement in option one (1).

Council Attorney Bob Palmer clarified under the state system the city would not be permitted either through ordinance or otherwise to modify the provisions at all.

Committee Chair Tomas Morgan confirmed option four (4) provides local municipalities the most flexibility.

Bob Palmer clarified the only mandatory provisions under option four (4) would be the one third (1/3) representation on the board by SBPD and the provision regarding a medical director giving written reasons.

Committee Chair Tomas Morgan signaled for a round of questions by council members before going back to committee members for a second round.

Councilmember Canneth Lee clarified if the Council does not create a merit system, then the state's model will be in place.

Bob Palmer stated the current ordinance that has been filed has five (5) members on the commission like the state model. If the Council creates its own merit system under option 4, provisions can be amended by ordinance, such as changing the number of members of the commission.

Council Vice-President Sheila Niezgodski enquired about the existence of the Board of Public Safety (BPS) after a merit board is enacted.

Bob Palmer stated all functions other than the administration of SBPD and SBFDF will remain with the Board of Public Safety. There is a possibility that the BPS and Board of Public Works could merge into one board in the future, however nothing is anticipated now. Council Vice-President Niezgodski enquired if the police may have anything they might not want to adhere to



in the state merit system.

Bob Palmer stated they might not like members of the commission being affiliated with different political parties or the way the state ordinance provides for discipline. Creating a merit board under option four (4) gives Officers more flexibility and input than the state models.

Council President Sharon McBride enquired about the BPS and Community Police Review Board (CPRB) if a merit board is enacted.

Bob Palmer stated there is not anything inherently contradictory between the ordinances of a CPRB and a Merit Board. The CPRB should apply to a new merit system just as it would to the current system under the Board of Public safety.

Councilmember Ophelia Gooden-Rodgers enquired further about the CPRB.

Bob Palmer stated although there might be some inconsistencies that will have to be worked out, there is nothing inherently preventing the BPS, the CPRB, and the merit system operating within the same system.

Councilmember Sherry Bolden-Simpson re-enquired the difference between the prior and new statutes due to issues with the online audio quality the previous time she spoke.

Bob Palmer stated the prior statute authorized the city to create a merit system with minimal guidelines. The new statute passed last year circumscribes what the city can do with four (4) options being provided.

Committee Chair Tomas Morgan asked for a final round of questions before opening to questions from the public.

Citizen Member Frank Spesia inquired about amending the merit system under the different options.

Bob Palmer stated there is the opportunity to amend the merit system by submitting amendments back to SBPD for a vote after a one (1) year period with options one (1), two (2), and three (3). While the Council is free to amend the statute at any time with option four (4) as it does not require a vote from SBPD.

Councilmember Lee enquired about differences between the BPS and a Merit Board.

Bob Palmer stated the merit board could function like the BPS; however, the merit board will have to determine that on their own and chose to propose and adopt the rules under which they operate.

Committee Chair Tomas Morgan held the public hearing.

Wayne Hubbard, 4313 Windsor Place, South Bend, IN 46619, enquired if the merit board could be enacted next year to allow more time for deliberations.

Bob Palmer stated if nothing is done by December 31, 2024, the state mandated merit system will be automatically imposed.



Carol Stewart, 1035 Allen Street, South Bend, IN 46616, enquired if the 2023 ordinance supersedes the merit system.

Bob Palmer stated the prior ordinance was not amended, repealed, or vacated. The new 2023 ordinance specifically establishes a merit system under the prior statute.

Catherine Reading, 1134 Lamonte Terrace, South Bend, IN 46616, thanked the Chair for receiving public questions and stated there is the disciplinary matrix and CPRB that city officials and the community has worked hard on to create and enquired about keeping the existing system in place.

Bob Palmer stated keeping the existing system would require the Council to reject the merit system and the SBPD to vote in favor of that rejection. If SBPD disagrees, then the State merit board will automatically be in place.

Gerrie Casey, 421 Manitou Place, South Bend, IN 46616, enquired about the basis of why Police workers get to vote on their own discipline and merit, and how it will impact the CPRB.

Bob Palmer stated the basis for creating a merit board is that the City of South Bend must comply with the statutes and time limitations imposed by the Indiana legislature.

Jorden Giger, 302 S. Falcon Street, South Bend, IN 46619, enquired if the BPS is still governed under the previous statute if Council and SBPD reject the merit board; and if the composition of the BPS can be changed.

Bob Palmer stated if the merit system is rejected by both the Council and SBPD, BPS will remain exactly as it is, and further amendments would require changing ordinances and or statutes.

Joseph Adams Jr, 3465 High Street, South Bend, IN 46614, enquired if BPS could be amended to include a merit system and if the members elected by the SBPD could serve in an advisory capacity.

Bob Palmer stated that the merit system is void if BPS administers rules and regulations of the Police Department therefore it is not possible, and police elected members must be voting members.

Joshua Morgan, FOP 36, 71 W Sample Street, South Bend, IN 46601, stated he had spoken in front of the Council regarding House Bill 1016 (the bill that created a statewide police and fire department merit board) in 2022 and that it would go into effect in July 2023. Furthermore, other Police departments in Indiana have merit boards, such as St. Joseph County. The South Bend Fraternal Order of Police (FOP) would like a merit board as well. Joshua Morgan also enquired if the merit system will be discussed during the November 25, 2024, Council Meeting.

Bob Palmer stated the bill that has been filed is set for second and third hearing on November 25, 2024, and scheduled to vote on passage that same day.

Chairperson Rachel Tomas Morgan stated if anyone has any additional questions or clarifications needed to please email Council Attorney Bob Palmer at [bpalmer@southbendin.gov](mailto:bpalmer@southbendin.gov) preferably



before the weekend, and stated that the Clerk's office will be sending out the Monday, November 25<sup>th</sup> committee schedule and the 7:00 pm Council notices on Thursday.

With no further questions, Chairperson Rachel Tomas Morgan adjourned the meeting at 8:03pm.

Respectfully Submitted,

A handwritten signature in black ink that reads "Rachel Tomas Morgan". The signature is fluid and cursive.

Rachel Tomas Morgan, Committee Chair

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