

## **Fire Rescue Ordinance Advisory Committee Meeting Summary**

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**Date:** January 13, 2009

**Attendees:** Ken Boyd, Ann Mallek, Chief Doug Smythers, Chief Dayton Haugh, Bryan Elliott, Chief Dan Eggleston, Annie Kim, Ron Williams (alternate for Dayton), Ambassador Nat Howell

### **Summary of Meeting:**

1. Ken opened the meeting by explaining that Ambassador Howell has agreed to facilitate the committee meetings.
2. Annie provided a brief overview of some provisions in the ordinance that might not be self-evident. These included the use of the words “unified department” in the preamble and elsewhere; definition of “policies” in §6-101; the requirement for a grievance procedure for volunteers in §6-109(3)(g); the responsibilities of volunteer companies and squads in §6-105; and the provision that the advisory board would create committees to work with the career chief on certain matters in §6-107(3).
3. Mr. Howell said that he would like to facilitate discussion by going through the ordinance, section by section, and identifying the sections that caused no problem for the group, and those that would require more discussion.
4. Dayton said that the volunteers object to the whole premise of this ordinance. Ann asked whether the executive committee structure helped to alleviate those concerns at all. Dayton said it does not. Dayton said that the appeal process is not really an appeal process because the standard is to best serve the department. Dayton said the volunteers’ preference is for a commission. Montgomery County is an example – the county has agreements with each volunteer company that were reached through collective bargaining. Ann said that part of Montgomery County’s ordinance was put into the draft ordinance, but not all of it.
5. Dayton said that the ordinance gives with one hand and takes away with the other: volunteer companies can establish policies as long as they do what the county tells them to do. Ken said that it’s difficult to move forward when trying to address general, rather than specific, statements. Ken asked whether individual companies shouldn’t have to follow the same process? Dayton said that it appears that agencies have autonomy under the ordinance, but they really do not. Ken said that the BOS has final authority at the end of the appeals process.
6. Ann said that we want to make sure that volunteers are not unpaid County employees and the draft does not really bring that out.
7. Doug said that if the draft ordinance looks at all like this, the volunteers will reject it. At a public hearing volunteers will turn out; the City of Charlottesville failed

- when they tried to put an ambulance out. Doug said that, based on his prior conversations with certain volunteer companies, he knows that an ordinance like this will mean that they will pull out.
8. Dayton said that in Stafford the volunteers left and went to Chancellor. He said that as the disincentives for volunteerism increase, they will go away.
  9. Dan said that our draft ordinance provides much more protection and encouragement to volunteers than Hanover, Stafford, Spotsylvania or New Kent.
  10. Doug said that he wanted to start out by saying that if we have a draft like this we may as well stop. Ann said that the “integrated department” language needs to be removed.
  11. Doug said we need to figure out what the goal is: to have one fire chief rule the whole match? Ken said that the purpose explains our goals and that we can’t operate as a bunch of small rural companies anymore. Doug said that we are going from zero to a full system under the code; why do we need to go all the way to the end? We can always add more provisions as we go along.
  12. Ken asked, what does this draft ordinance take away from you? Doug said that it allows the career chief to do really anything at the end of the day. Ann said that a couple of missing things need to be inserted – including something about system-level decisionmaking.
  13. Ann said that she’s heard from some chiefs that ACFRAB does not have enough input into certain decisions. Ann said that means to her that under a new system the chief would need to keep working with the executive committee until you have an agreement that works for both parties.
  14. Doug said, moving forward, let’s agree on things we have consensus on for the whole system. For instance, there are issues that the BOS may have wishes for, like response times or statistics. ACFRAB hasn’t known until the last year or so what types of things the BOS truly wants. Let’s codify the advisory board first as an advisory board to the BOS. If that doesn’t work, then we can take it to the next step. Right now there’s no data that shows the system is broken. We do need to make sure that we have basic policies for the system and need everyone to follow policies – we can have a procedure for that. Ultimately, this draft leaves everything open to the strong fire rescue chief.
  15. Ken said that coverage areas – what stations should be where – are huge decisions for the BOS. They can get very different feedback from different people on those issues. Now there’s no structure in place to get such matters moved through. Dayton said that he can’t imagine going to all of the ACFRAB meetings contemplated by the ordinance.
  16. Dan said our system does have issues. There are accidents that do not get reported to insurance companies. For example, a serious accident happened a few weeks ago and he heard about it from another person. ACFRAB has called

our system a loose confederacy and that's not what the BOS wants. We do have a lot of room for improvement. Doug asked in what areas? Dan said that he and Doug have discussed safety issues various times before.

17. Dan said that we also still have a bloated insurance policy – our policy covers some vehicles that we don't even have anymore. Doug said that we have vehicles that aren't being used. Dan said that's why we need a systems approach.
18. Dan said that having a policy appeal process is very positive for the volunteers; it provides a good check and balance. This appeal process does not exist in any other ordinance that he's seen. Ken said that one of the things this ordinance does is require Dan to collaborate with volunteers. Ken said that it appears that perhaps the volunteers are uncomfortable with the BOS having the final say in matters.
19. Ann said that the draft ordinance should be changed so that it's clear the system can't make decisions about individual companies. Doug said that without being able to identify everything in advance, it's hard to know. Doug said that if the volunteers accepted the premise of the ordinance, it could work, but it also has the potential to fail.
20. Annie said that the standard for policy making in the ordinance is not what will "best serve the department," as some have been saying tonight, but what will "best serve the community." Dan said that a t-shirt policy is not going to get off the ground. Ann said that Loudoun had some language that would help.
21. Ken said that if, ultimately, the volunteers are concerned about the BOS having the final say, that is a different process and a different issue from being concerned about the career chief having authority. Ken said that the BOS does not think that the volunteers should be a confederacy. Ken does not see this as a way for the career chief to take control of station level issues. The old system served well when the community was different and service areas were simpler.
22. Mr. Howell asked, would it be better to tie the policies permitted by ordinance strictly to best serving the community? As a board member, Mr. Howell said that he would suggest that the career chief not pass policies that will increase costs to individual stations without providing money for those increased costs.
23. Ken said that the Dillon's rule says that without clear state authority, the county lacks authority to take actions. Perhaps we could have something like that in the ordinance for the fire rescue chief. Ann said she liked that.
24. Dayton said that he does not want to try to fix one problem and add other problems. Ken asked, if there are things that the chief should not be able to do, and those areas are spelled out in the ordinance, would that help? Dayton thinks it could help.

25. Purpose section. Ann had suggestions: “unified department” seems to be a problem for FLSA – thinks that would step over that line. New terminology could be found. Montgomery County uses the term “fire and rescue service.”
- a. Annie said that the word “department” will not make a difference for FLSA determinations – those really depend on the extent of true overlap between the volunteer and career systems. Also, we are not in Maryland – Maryland may have different enabling authority for fire/EMS departments than Virginia.
  - b. Ann raised Loudoun as an example – service or system? Annie said that she does not believe Loudoun’s ordinance refers to it as a service or system, although their non-ordinance documents may.
  - c. Ken asked whether we had to legally use the word “department.” Annie said that “department” is the word used by state code and by every other Virginia ordinance she has seen. “Unified department” is the best term to use, from her perspective. However, it would not be illegal to use some other word to describe the department.
  - d. Dan said that the real issue may be about the substance, not the language.
  - e. Ken said that if we can reach a compromise, he’d like to do that. We just need to define some areas better than what a confederacy provides.
  - f. Dan said that we need to go with the BOS’s charge and intent.
  - g. Ann said that the BOS does not want this to fail.
26. Doug said that we’ve got 2 members of the BOS here; is Dan trying to correct the board members here? Dan said that we need to follow the BOS’s action and charge for the ordinance. Doug asked where did the BOS get its information about the background for its resolution on the ordinance –from the two chiefs (Hanover and Stafford) or elsewhere? Ann said that she should have been more vocal about the term, “strong fire chief.”
27. Ken said that we’re relying on our knowledge of organizations. The majority of the board does not think a confederacy-style system works. Individual board members have probably also talked with other board members about these issues.
28. Ken asked, can we define what are systems problems and identify those in the ordinance? Then, in the absence of express authority from the ordinance, we could provide that the chief would not be able to do anything. Ann thinks that might work.
29. Annie said that it may be difficult to tease out the areas where the chief would be able to make policies –created in collaboration with the advisory board– from the areas where the chief would be restricted. Perhaps 90% of the decisions that the chief might make would overlap with policies.
30. Bryan said that some TV coverage has shown volunteers not wearing proper gear at emergency scenes.
31. Ken mentioned the ambulance issues at CARS and Crozet – he does not want those to be up in the air indefinitely.

32. Dayton said that another concern is that we could have too many policies and then have compliance problems. Ken asked if having the ordinance would proliferate policies? Dayton thinks so.
33. Doug raised the example of turnout gear – if you have an SOG at the advisory board level about turnout gear, then individual companies need to incorporate that into their own by-laws. Ken said that now there's no requirement to incorporate them.
34. Dan said that in those situations he brings up a concern (like turnout gear) to the incident commander, unless it's a serious safety issue. It's up to the chief and officers there at the scene to handle the issue, and most of the time that is something that everyone agrees on. But if you have a situation where a company has been given equipment to extricate people—and they refuse to use that equipment and citizens are disadvantaged—we have a public safety problem that he does not have the ability now to solve.
35. Ken asked how do services/commission model systems handle problems like that? Ann said that our current system bears some similarities to those models.
36. Dayton asked, what would Dan do with the extrication equipment? Dan answered that he would send out the next closest unit and take other measures to support the response. Doug asked why the company does not take out the extrication equipment? Dan believes it may be because it is County equipment. In situations like this, Dan is concerned that we would all lose credibility for not effectively using equipment. Ann asked whether the company was involved in the purchase; Dan said it was. Someone asked whether the matter had been raised at the ACFRAB level, and Dan said that he had not done that, because he had wanted to work with the company privately, rather than making the issue public.
37. Annie said that on page 6, the draft ordinance contemplates that ongoing compliance problems for volunteer companies or County staff would be addressed by an advisory board committee. Dayton said that, however, the committee's ultimate role in this section is to advise the fire/rescue chief.
38. Doug asked what would happen if a person got stuck and the extrication equipment can't be sent? Dan said that they wouldn't let the person suffer and would send whatever equipment is necessary. Dan brought up the example of a beard policy: a volunteer with a beard could be a pump operator, for instance, or take on some other function that does not involve entry into a burning building.
39. Dayton asked what would happen with the beard example if the chief were someone other than Dan? Bryan said that if we had to replace Dan we would involve volunteers and would hire someone with the personality and approach to be collaborative. He would act very carefully, knowing that policy decisions can be checked by the advisory board. Dayton said that hasn't stopped Chief Brown in Stafford. Dan said that Stafford does not have a policy appeal provision in their ordinance.

40. Bryan said that we need to have independence written in the ordinance, but also have structure.
41. Doug said that the desire to reduce insurance costs is a government or business approach that the volunteer culture does not have right now. That kind of thinking makes an individual organization feel that, although they are already being good stewards, now someone is trying to tell them something different and trying to impose additional standards. Dayton said that we don't know what the insurance costs are and what they are based on. Probably backing up is dangerous. Dan said that the insurance company has a central list; anyone can update or change their information without the county knowing about it. Doug asked how would you change that? Dan said we could have a policy about adding vehicles. Dayton said that the ACFRAB finance committee is supposed to have some role in this currently.
42. Dan said that we had water released on road recently that caused a woman's car to flip over. He found out by accident. He would like to have a peer group look at accidents. Ann asked, wouldn't the ACFRAB look at it? Dan said that he'd like a peer group to look at those.
43. Ken asked, how would the ordinance change how you do business? Dayton thinks it would double the bureaucracy. We already have a safety committee; now we'd have a system committee in addition. Ken said that you might have a great model that could be used in the County. Dayton asked if we would need to do that review twice? Ken said that if Dan passed a policy that they didn't agree with, they could appeal. The BOS doesn't want to have lots of appeals. Ken said that policies like CARS's policy on safety committees may not exist throughout the county. Annie said that a county-wide policy could provide minimum standards for individual companies and not require duplicative committee review – the volunteer committee's decision/report could be sent to the career chief.
44. Ken said that he just observed Dan and Dayton talking about a problem and getting to a reasonable solution. Ken thinks that that's how things would work under a new ordinance. Right now there's no process for handling that, or for requiring collaboration and appeal. Ann agreed. Ken said right now he doesn't have collaborative feedback on matters like coverage issues, and he wants that unified response.
45. Dayton said that the ACFRAB hasn't been given the question of what it would mean to have 5 minute response time throughout the County – what would that cost? Ken said it's not all about cost, but about using national standards and best practices. Dayton said that in Prince William they opened up more stations than they could maintain financially. Bryan said that the CIP for Pantops and Ivy have factored in an average 5 minute response time for 90% of the time. Staff has been directed to utilize volunteers as much as possible for those stations.
46. Dan said that he has been monitoring the kind of information that has come across his desk over the last 10 days. Some examples: at the leadership council

meeting on Friday, they discussed doing an environmental scan to look at how we go about transforming government – he thinks that could affect the whole system. He thinks that under this new system he would meet with the executive committee; if the issue was going to get in-depth, he'd ask for someone from the advisory board to help look at the matter from a systems approach. There is also a Places 29 meeting coming up; he doesn't know what impact that will have on the system now; if it gets more in-depth he would want to get a group to look at this. Right now we don't have process for this and Dan has to make decisions without guidance; an ordinance would help. Also, the OMB has asked them to reduce the budget and reduce PPE; he was able to reconcile the budget without reducing volunteer funds; if that wasn't possible, he'd have to go to the advisory board. He thinks that the new process would be slower, but fully collaborative. Ken said that the executive committee would give an easy mechanism to get people together. Dayton said that he sees these as short informational items for advisory board meeting or matters that could be bounced off the executive committee.

47. Ann said that the executive committee's meeting schedule could be frequent and they could even have conference calls. Dayton asked whether Dan thought the new system would slow things down? Dan said that he would need to run more decisions through more people, but thought that was a good thing. Dayton said that he doesn't think that the system would want to know and be involved in everything. Ann said that is why it's important to notify people and say that "you may want to be involved in a-c, but not d-e – let us know if you think otherwise." Doug said that people will speak up when they believe they should have been involved.
48. Doug said that, as an example of more policy-making, Dan could decide that after action reports be mandated for everyone. Such a step might be beyond what volunteers are used to doing and feel is necessary. Dayton said that they aren't good past 24 hours if you want honest assessments. Dan said that that's where the hard work begins. Dan doesn't want more bureaucracy than needed; Fairfax's reports, for instance, are very long. Dan might want to see something short – checking off certain areas, but if the matter involved significant property loss or a close call, we might need more information. Ken said this is the kind of thing we would expect you to work out through policy development.
49. Ken asked whether Doug and Dayton could get specific comments about the draft ordinance to Annie. Doug said that we agreed to release the draft to the volunteers after the meeting; Ken said if there are wordsmithing areas that we could work on before the release, that might be best. Ken said that the idea was we'd be able to talk about the ordinance first, and we haven't been able to really talk about the ordinance.
50. Bryan asked Mr. Howell what he thinks – he suggested that we refine the policy areas and then we might have a document to look at and share with everyone.

51. Ken asked, if you look at a fire chief system and accept that as a starting point, what can you put into the ordinance to make the system work? Can Doug and Dayton do that?
52. Mr. Howell asked whether we have confidence building measures? Ann said what about Ken's reverse Dillon Rule approach? Ken said that he is having second thoughts about that. Ken said we could create sunset provisions in the ordinance, so that it would expire by a certain date. Annie said that because one board cannot obligate another board, the BOS could always amend an ordinance even without a sunset provision.
53. Dayton said the County could have agreements with individual companies that cover the amount of funding, coverage areas and terms. Bryan asked what would happen if you have a catastrophic situation and an agency hasn't signed an agreement? Dayton said that if a company isn't willing to sign, the County can contract with someone else. Also, even now other companies outside the county run calls here and work with us without a contract.
54. Annie said that she would legally recommend adopting an ordinance over doing individual agreements – ordinances are authorized by state code, and would provide a more efficient and uniform structure. Dayton said that contracts are also authorized by state code, and Annie agreed. Doug said that sometimes these things take a long time and it makes sense that hard issues need more time. Annie asked what is the benefit of contracts? Dayton said it would be for a limited period of time – not an indefinite period of time. The BOS would likely just renew an ordinance if it expired.
55. Ann asked, can we try this out as a process now with ACFRAB and create an executive committee? Dayton thinks that might be useful and Doug agreed. Doug said that the ACFRAB doesn't really have a charge. Dan thinks that they knew they were making system level policies and knew they were serious, but some people did not want to go along. Doug asked, why not bring back this question back to ACFRAB and look at addressing policy accountability? Dan said that we have a good system of checks and balances in the draft ordinance.
56. Dayton said that contracts could have money tied to performance and all of that could be accomplished without a public hearing, which might be attractive to the BOS. Dan said that idea uses a stick approach and implies no trust between people. Dan said he is concerned that the County would be negotiating with individual agencies and could end up with different provisions and long negotiations.
57. Ken said that he threw out a sunset provision in the ordinance as a possibility but did not think a contract solution would be accepted by the full BOS.
58. Doug asked, what if we don't have an ordinance by April but had by-laws amended by ACFRAB to try out the system, perhaps trying it out for a year? Ken said that you'd really need to do that for a couple of years to see fully how it would work.

59. Annie said, under that approach the ACFRAB still has no legal authority over volunteer stations unless the stations incorporated those by-laws into their own by-laws. Dayton said that you would have a contract in place with each agency.
60. Ken asked whether the group had ideas for how the ordinance would work differently. Doug said to replace “department” with “system.”
61. The group discussed how it could go about getting internal input on the draft ordinance. Annie said that she could send the document out in Word and get individual comments, but that she would prefer having a meeting or conference call with people to understand the comments. Then she could compile the comments and send it out to the group.
62. The group discussed briefly when they would be briefing the BOS. Ken suggested the first meeting in February.