

City of Alexandria, Virginia

Options for Civilian Oversight of Policing in Alexandria

City Council Legislative Meeting
January 12, 2021



Recap of Council Efforts on Civilian Oversight of Policing



- June 8, 2020 – Council Resolution 2950 directed City Manager, City Attorney to deliver a “proposal to establish the Community Police Review Board” in Alexandria
- September 8, 2020 – Staff presented Council with an ordinance, research proposing a “hybrid” review/auditing Board, Policing Auditor position
- September 8, 2020 – Council requested staff return at a later meeting with additional options, including staffing and fiscal considerations

Current Oversight of Law Enforcement in Alexandria



- Alexandria Police Department conducts internal investigations of complaints, incidents involving APD sworn officers, civilian staff
- Alexandria Human Rights Commission has investigative authority, including subpoena power, regarding complaints related to the City's City Human Rights Code – discrimination on the basis of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation, gender identity, transgender status, or disability

Current Oversight of Law Enforcement in Alexandria



- Alexandria Police Department (APD) conducts all investigations (Office of External Affairs and Professional Responsibility)
- Virginia State Police investigate all officer involved shootings
- Alexandria Human Rights Commission (AHRC) provides oversight on excessive force, demeaning language, and harassment cases
- APD reports the results of internal investigations in these areas to the Executive Committee of the AHRC and the Director of the Office of Human Rights for their review

Current Oversight of Law Enforcement in Alexandria



Pros	Cons
<ul style="list-style-type: none">• No additional public bodies are needed• Provides a third party review of certain complaints/incidents without requiring a new entity• Human Rights Commission (HRC) has subpoena power in cases related to the City's Human Rights Ordinance• City Council appointed board	<ul style="list-style-type: none">• HRC has other responsibilities• May not have expertise on policing matters• HRC does not have authority to investigate all complaints/incidents of police misconduct• HRC does not have the authority to initiate investigations that are wholly independent of APD

Model A: Review-Focused Civilian Oversight



- Most basic model of civilian oversight of policing
- Civilian board composed of citizen volunteers reviews completed police internal affairs investigations of complaints
- Board generally offers non-binding recommendations regarding the accuracy, completeness, impartiality of investigations
- Issues recommendations regarding sufficiency of discipline resulting from investigations

Model A: Review-Focused Civilian Oversight



- APD would conduct all investigations
- Community Policing Review Board would review investigations of civilian complaints
- Board would make findings as to accuracy, completeness, impartiality of completed investigations
- Board would issue recommendations as to sufficiency of discipline

Model A: Review-Focused Civilian Oversight



Pros

- Review Board, Management work as team
- Efficient process – investigations are all done the same way
- Limited staffing needs – can use the existing staff network
- Provides opportunity for review of certain complaints/incidents and investigations
- Ensures community can provide input into the complaint investigation process
- Community review of complaint/incident investigations may increase public trust
- Generally the least expensive form of oversight, typically relies on volunteers

Cons

- May have limited authority, few organizational resources
- May rely entirely on law enforcement for information
- Review board volunteer members may have significantly less expertise in police issues
- Review board volunteer members may have limited time to perform their work
- May be less independent than other forms of oversight without independent staff support

Model A: Review-Focused Civilian Oversight



Estimated Cost to Implement Review-Focused Civilian Oversight of Policing in Alexandria

- Executive Director – \$150,000 per year
- Additional Assistant City Attorney I in City Attorney's Office – \$100,000 per year
- Budget for additional expenses – \$75,000 per year
- Total cost of Model A = \$325,000 per year

Model B: Investigative-Focused Civilian Oversight



- Operates separately from law enforcement agency
- Often a separate city agency
- Conducts independent investigations of complaints against law enforcement officers, civilian employees
- May completely replace police internal affairs
- May supplant internal affairs re: investigations of certain kinds of complaints, i.e. abuse of authority, severe misconduct

Model B: Investigative-Focused Civilian Oversight



- Community Policing Review Board would investigate all complaints against law enforcement (or investigate certain kinds of complaints)
- APD no longer conducts complaint investigations (or no longer conducts certain investigations)
- Board becomes a separate City agency
- Board likely has subpoena power to compel civilian participation in investigations
- Board issues binding decisions on discipline

Model B: Investigative-Focused Civilian Oversight



What About Concurrent Investigations?

- Do not recommend this model
- Significant duplication of efforts, potentially inefficient use of resources, necessity to address, and resolve, investigations with different outcomes
- Could jeopardize investigatory process entirely if two bodies are conducting the same investigation at the same time, reviewing the same evidence, and speaking to the same people

Model B: Investigative-Focused Civilian Oversight



Pros

- Fully independent of law enforcement agency
- Full-time civilian investigators may have highly specialized training
- May reduce bias in investigations into resident complaints
- Civilian-led investigations may increase community trust in the process

Cons

- Expensive, organizationally complex
- Requires additional staff
- Community concerns when subpoena authority is used to compel members of the public (complainants/ witnesses) to testify, provide evidence
- Removes disciplinary responsibility, control of employees from Chief of Police
- Potential to undermine responsibility of the Chief of Police to maintain discipline
- Civilian investigators may face strong resistance from police personnel, create adversarial relationship
- Sets high expectations for change with the public, may result in disillusionment when expectations are not met quickly

Model B: Investigative-Focused Civilian Oversight



Estimated Cost to Implement Investigative-Focused Civilian Oversight of Policing in Alexandria

- Executive Director – \$200,000 per year
- Two investigators (based on a best practice ratio of one investigator/150 officers) – \$200,000 per year
- Board appointed attorney – \$150,000 per year
- Budget for other expenses – \$175,000 per year
- Additional Assistant City Attorney I in City Attorney's Office – \$100,000 per year
- Total cost of Model B = \$825,000 per year

Model C: Hybrid Auditing/ Investigation Civilian Oversight



- Law enforcement conducts investigations except those assigned, in code, to the oversight body
- Oversight body conducts certain investigations
 - Civilian complaints
 - Use of force by a law enforcement officer
 - Death or serious injury to any person held in custody
 - Allegedly discriminatory stops
 - “Abuse of authority” or “severe misconduct
- Provide feedback and input on policing policies, directives, programs, and outcomes as well as data, reports, budgets, expenditures.

Model C: Hybrid Auditing/ Investigation Civilian Oversight



- APD conducts all investigations except those assigned, in Code, to the Community Policing Review Board
- Board investigates certain investigations, such as
 - all civilian complaints
 - use of force
 - death or serious injury to any person held in custody
 - allegedly discriminatory stops
 - incidents categorized as “abuse of authority” or “severe misconduct”
- Board provides feedback, input on policing policies, directives, programs, outcomes, data, reports, budgets, etc.

Model C: Hybrid Auditing/ Investigation Civilian Oversight



Pros

- Less expensive than full investigative bodies
- Recognizes different levels of investigative needs
- Uses existing processes/systems
- Utilizes aspects of the investigative, review and auditing models in a combination that may be unique to the community in order to achieve the balance of oversight demanded by the community

Cons

- More expensive and organizationally complex form of civilian oversight than review
- Will require additional staff
- May be complicated to explain to the public

Model C: Hybrid Auditing/ Investigation Civilian Oversight



Estimated Cost to Implement Hybrid Auditing/ Investigation Civilian Oversight of Policing in Alexandria

- Cost depends largely on how the work is divided
- Executive Director/Auditor – \$200,000 per year
- Outside counsel (certain investigations) – \$75,000 per year
- Additional Assistant City Attorney I in City Attorney's Office – \$100,000)
- Other expenses – \$125,000
- Total Cost of Model C = \$500,000 per year

Model C (v2): Hybrid Auditing/ Investigative Civilian Oversight



- Board investigates all civilian complaints
- Integrate Policing Auditor into APD investigations of:
 - use of force
 - death or serious injury to any person held in custody
 - allegedly discriminatory stops
 - incidents categorized as “abuse of authority” or “severe misconduct”
- Board can request the inclusion of the Policing Auditor in any other internal APD investigation
- Board can determine an APD investigation to be insufficient, transfer investigation to the Board
- Board staff conducts independent investigation, issues findings, including discipline recommendation/determination
- Would require investigative staff, adding some cost

Subpoena Power



- 35 law enforcement oversight bodies in the US have subpoena power
- Includes bodies that are investigation-focused, review-focused, and auditor-monitor focused but was most often seen in investigation-focused bodies (20)

Subpoena Power



- Often prohibited from undertaking investigation until pending criminal charges against police officers have been adjudicated or receive permission from district (Commonwealth's) attorney
- Already has authority (*Garrity v. New Jersey*) to compel officer/staff participation
- Most often used to compel citizens (complainants, witnesses) to testify, provide evidence

Subpoena Power



How are Subpoenas Used?

- Portland, OR – Hybrid Model
 - Independent Police Review has subpoena power
 - Issue 1 or 2 subpoenas per year
 - Subpoenas most commonly used for cell phone records

- Atlanta, GA – Hybrid Model
 - Citizen Review Board has subpoena power
 - Averages 2 to 3 subpoena issuances a year
 - Subpoenas have only been used for items outside of the City's control

Conclusion



- General Assembly may be revisiting legislation passed on this issue to include Sheriff's Departments in the definition of "law enforcement officer"
- Recommend any preferences, proposals or draft materials go out for significant, robust community engagement and outreach
- Involve concerned residents and stakeholders
- Include their feedback in Council decisions moving forward in this process

Current Oversight of Law Enforcement in Alexandria



Subpoena Power	Yes (in certain cases)
Binding Disciplinary Authority	No
Receive Community Complaints	No
Decide How a Complaint will be Handled	No
Review Police Complaint Investigations (e.g. for thoroughness, completeness, accuracy)	Yes (in certain cases)
Conduct Independent, Fact-Finding Investigations	No
Perform Data-Driven Policy Evaluations	No
Recommend Findings on Investigations	Yes

Model A: Review-Focused Civilian Oversight



Subpoena Power	Rarely
Binding Disciplinary Authority	No
Receive Community Complaints	Frequently
Decide How a Complaint will be Handled	Rarely
Review Police Complaint Investigations (e.g. for thoroughness, completeness, accuracy)	Frequently
Conduct Independent, Fact-Finding Investigations	Rarely
Perform Data-Driven Policy Evaluations	Sometimes
Recommend Findings on Investigations	Sometimes

Model B: Investigative-Focused Civilian Oversight



Subpoena Power	Frequently
Binding Disciplinary Authority	Frequently
Receive Community Complaints	Frequently
Decide How a Complaint will be Handled	Frequently
Review Police Complaint Investigations (e.g. for thoroughness, completeness, accuracy)	Rarely
Conduct Independent, Fact-Finding Investigations	Frequently
Perform Data-Driven Policy Evaluations	Sometimes
Recommend Findings on Investigations	Frequently

Model C: Hybrid Auditing/ Investigation Civilian Oversight



Subpoena Power	Potentially (on matters it investigates)
Binding Disciplinary Authority	Potentially (on matters it investigates)
Receive Community Complaints	Potentially
Decide How a Complaint will be Handled	Yes
Review Police Complaint Investigations (e.g. for thoroughness, completeness, accuracy)	Potentially
Conduct Independent, Fact-Finding Investigations	Frequently
Perform Data-Driven Policy Evaluations	Potentially
Recommend Findings on Investigations	Frequently