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City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 2, 2020

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: MARK B. JINKS, CITY MANAGER /s/

DOCKET TITLE:

Receipt of the Draft Community Policing Review Board and Independent Policing Auditor Ordinance

ISSUE: Presentation of a draft ordinance to (1) establish a Community Policing Review Board and (2) an Independent Policing Auditor

RECOMMENDATION: Direct the City Manager utilizing the attached ordinance as the basis of community discussion (1) to establish a community outreach process to review and collect input on the draft City ordinance that would authorize a Community Policing Review Board and Independent Policing Auditor in the City of Alexandria; (2) to use collected input to inform an updated draft ordinance; and (3) to bring a proposed ordinance forward for first reading at the November 10 City Council legislative meeting, and public hearing and adoption at the November 14 Council Public Hearing.

BACKGROUND: On June 9, 2020, City Council unanimously adopted Resolution 2950, which condemned

police brutality and systemic racism; reaffirmed that Black Lives Matter; and stated Council's intent to establish a community police review board in our City. In this resolution, City Council acknowledged that the plight of Black and Brown Americans is not only present in the form of police brutality, but is also entrenched in institutions such as the judicial system, the electoral process, career advancement, education, housing and the health care system.

The resolution also affirmed that the City of Alexandria and all government officials have a duty to ensure the protection of all communities through actions and reform, including in the justice system. To that end, the resolution directed the City Manager and City Attorney to return to Council at the first Legislative Meeting of September with a proposed ordinance to establish a community police review board in Alexandria.

Council's direction to City staff echoes the increased national and community interest in increased accountability and transparency with regard to policing. Specific instances of police misconduct or serious abuse of authority are, thankfully, few and far between in Alexandria as the City has a quality police department with quality, trained, professional police officers. However, it is important to be responsive to community perceptions and respond to the community's call for review, evaluation and change in our policing system. While there is a system of checks and balances in place, the proposed Community Policing Review Board and Independent Policing Auditor will recalibrate and improve existing checks and balances.

Concurrent with staff work on this issue, the General Assembly has been preparing for and participating in a Special Session of the General Assembly on issues related to criminal justice reform and policing reform. Legislation addressing the establishment of Community Police Review Boards is currently being considered in the General Assembly - SB 5035 (Hashmi) and HB 5055 (Herring). In a letter to Alexandria's General Assembly delegation on July 29, 2020, Council expressed support for legislation that would allow localities to *"establish these bodies as appropriate for their community, including affording us any necessary authority and providing appropriate funding to support the implementation of these bodies in localities across Virginia."*

As of the date of this memo, the House and Senate have each passed legislation in this area out of the House Courts and Senate Judiciary committees. There are significant differences between the two bills (including mandate vs. permissive and the inclusion of Sheriff Deputies who provide policing services in much of the State) which we expect will be worked out as the bills move through the legislative process, most likely in Conference Committee. The City's Legislative Director is working with the patrons of both bills as well as stakeholders and subject matter experts on this issue to ensure the final legislation affords Alexandria the flexibility to establish a community police review board that responsive to the needs, concerns, perceptions and problems in our community and is truly representative of Alexandria.

DISCUSSION: Per Council's direction, City Staff has worked for the past 90-days to prepare a draft ordinance to establish a community police review board in Alexandria. Staff work has included outreach national to subject matter experts in the area of community oversight of law enforcement, discussions with City staff including the Police Chief and police association representatives, as well as outreach to members of the community on the topic of community police oversight in Alexandria.

The draft ordinance for a Community Policing Review Board (the "Board") and Independent Policing Auditor (the "Auditor") in Alexandria prepared by staff is envisioned to be the beginning of an iterative process that will change and grow to better meet the needs of the community and evolve in response to the work of the Board and the proposed Independent Policing Auditor. This draft is only the first step in the evolution of this Board but demonstrates a long-term and comprehensive commitment to transparent police oversight, equitable policing, and accountability in Alexandria.

Staff has identified the following elements as critical to successful police oversight in Alexandria:

- the need for a Community Policing Review Board with independent authority to review and evaluate complaints about the conduct of law enforcement officers and civilian employees of the Alexandria Police Department (APD);
- the need for a Community Policing Review Board with authority to access relevant, unredacted APD documents and data;
- the need for professional, experienced support staff, including but not limited to a City Council appointed Independent Policing Auditor, and an appropriate corresponding budget; and
- the need for ongoing public engagement and public reporting on the work of the Board and the Auditor.

The establishment of a Community Policing Review Board and Independent Policing Auditor dovetails with the City of Alexandria and the APD's support for and implementation of the philosophy of community-oriented policing. Robust community outreach, a shared desire for safer, more stable, more secure communities, and working partnerships in the community are all part of this philosophy - a philosophy based on the belief that our community should be provided with the public safety services that it desires and needs. Community review and accountability is a natural extension of the community engagement and outreach that is key to community-oriented policing, which is why community oversight of law enforcement can be seen as an inherent part of our community oriented policing model. The final report of President Obama's Task Force on 21st Century Policing, issued in May 2015, recommended: *"Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."*

Staff engaged in significant conversations with staff of the National Association for Civilian Oversight of Law Enforcement (NACOLE), a non-profit which serves as a convener and provides subject matter expertise for individuals and agencies working to establish or improve oversight of policing in the United States. NACOLE touts independent oversight boards as an avenue to promote public trust in police services and ensure integrity and transparency during internal police investigations. In addition, formal civilian review can be a tool to ascertain there are if systemic issues within a police department that may need addressing.

When done correctly, civilian oversight of law enforcement can protect civil rights, support effective policing, ensure greater accountability, manage risk, build bridges in our community, and increase confidence in our police. The end goal of this effort is to create a system that delivers the most professional, appropriate and effective police services possible to our community.

It is generally accepted that there are four models of civilian oversight of law enforcement. The first model is investigative, where the board takes a complaint, conducts an investigation, and renders a conclusion. The second model is review, where a board reviews completed police internal affairs investigation, offering recommendations regarding findings. The third model is auditing, wherein a board examines broader patterns in complaint investigations, including any relevant patterns in quality of investigations, findings, and discipline, and makes recommendations based on their findings. The final model is a hybrid model, where parts and portions of the investigative, review and auditing models are brought together in combinations that may be unique to the community in order to achieve the balance of oversight demanded by the community. Some researchers call a hybrid model the "Ideal Police Review System."

In doing research and speaking with subject matter experts on civilian oversight of law enforcement, staff came away with two major conclusions that guided the production of the draft ordinance.

The first is that *“if you’ve seen one community police review board, you’ve seen one community police review board.”* While there are best practices, principles, standards and guidelines based on solid research regarding what makes a community police review board successful, there is no one single model and no one set of duties or authority that will fit the needs of every community. A significant amount of time was spent researching and reviewing community police oversight models across the country, including local examples from Charlottesville and Fairfax County. However, the tremendous variation in the about 200 community police oversight entities in the United States today makes it almost impossible to simply make an automatic selection of commonly implemented citizen review features around which we could build our own oversight procedures. This diversity means we should not feel obligated to dutifully replicate any one model or approach; we have the freedom and the responsibility to tailor the various components of our system to the particular needs and characteristics of our community.

This clearly advises the second conclusion, which is that a community police review board needs to be unique to the community it intends to serve and must have the scope and authority necessary to be responsive to the needs, concerns, perceptions and problems in that community. It must be built on the engagement of local stakeholders and robust community input. This is why we are recommending that the draft ordinance go out for significant, robust community engagement and outreach to listen to concerned and involved citizens and stakeholders and include their feedback in the final version of Alexandria’s Community Policing Review Board and Independent Policing Auditor Ordinance. In addition, a webpage will be established with the draft ordinance including materials from other jurisdictions and NACOLE.

While models of civilian oversight of law enforcement exist, oversight is not a “one-size-fits-all” proposition. However, there are some features - some quantitative, some qualitative - which are key to effective oversight, including independence, adequate funding, access to critical information, rapport with key officials, ample authority, transparency, community/stakeholder support and outreach, and the ability to review police policies, training and other systematic issues. These key features were incorporated into the draft ordinance to establish a Community Policing Review Board in Alexandria. While some police reviews boards focus just on complaints and use of force incidents, it is proposed that Alexandria put in place a Community Policing Review Board that will focus on providing feedback and input not just on individual cases, but also other policing policies, directives and programs. Such a broader mandate will be more impactful on the outcomes of policing in our community

The draft ordinance proposes a hybrid model of civilian oversight of law enforcement, with a review/auditing focus for the Board at its outset. As community oversight bodies are intended to be iterative, this model lends itself to a natural evolution of the Board as it accomplishes its initial purpose.

The purpose of the Board is to enhance policing legitimacy and to increase and maintain public trust among the police department, City Council, City Manager and the public. The Board is charged with:

- providing timely, fair and objective review and evaluation of policing policies, practices, procedures, and outcomes in Alexandria;
- providing meaningful assessments and corrective recommendations intended to remedy discriminatory practices, including race and social inequities, that it may find;
- ensuring the protection of all communities through recommended actions and reform, including in the criminal justice system; and recommend strategies for effectively implementing these reforms in our community.

The draft ordinance establishing the Community Policing Review Board proposes a seven-member board appointed by Council. The membership of the Board is intended to create a fair, objective, independent, diverse and representative body and is proposed to include:

- at least three members who come from historically racially or socially marginalized communities that have commonly experienced disparate policing in Alexandria;
- at least one member who represents an organization, office, or agency that seeks racial or social justice or that otherwise advocates on behalf of historically, racially or socially marginalized communities, particularly communities that may have experienced disparate policing; and
- at least one member with past experience in law enforcement, criminal justice or policing but who may not be a current employee of, or immediate family member of an employee of, a law enforcement agency; and
- noting that one member may be representative of more than one group.

The draft ordinance provides the Board with specific authority in order to achieve its stated purpose as enabled under current State law, including:

- Developing and administering a process for receiving and referring to APD for investigation civilian complaints regarding conduct of APD law enforcement officers and civilian employees;
- Reviewing and evaluating the investigation of civilian complaints regarding conduct of APD law enforcement officers and civilian employees received by the Board and submitted to the APD for investigation;
- Reviewing and evaluating the investigations of APD use of force, whether or not a civilian complaint has been filed, including officer-involved shootings, use of electronic weapons and other uses of force, all in-custody deaths and all police actions that result in the death of a person;
- Reviewing and evaluating completed APD Office of External Affairs and Professional Responsibility (OEAPR) investigations of civilian complaints and use of force incidents and issue findings regarding the accuracy, completeness, and impartiality of such investigations and the sufficiency of any discipline resulting from such investigations;
- Reviewing and evaluating existing and proposed APD Directives, including all rules, policies, and procedures which direct the operation of the APD and its employees;
- Reviewing and evaluating reports issued and data collected by the APD related to policing practices, policies, procedures, and outcomes;
- Receiving, reviewing and evaluating the annual budget and expenditures of the APD and make budgetary recommendations;
- Advising City Council on the hiring and annual evaluation of the Independent Policing Auditor;
- Producing public reports regarding the work of the Board;
- Recommending legislation, policy changes and other actions related to review and evaluation conducted by the Board to the City Council, City Manager, APD, School Board, School Superintendent, and other

public agencies;

- Conducting community outreach in the city related to the review and reform of policing practices, policies and procedures in Alexandria and the work of the Board; and
- Undertaking any other duties as reasonably necessary for the Board to effectuate its lawful purpose to effectively review the policing agencies as authorized by the city.

This initial scope and authority of the Board will be supported by a Memorandum of Understanding (MOU) between the Board and the APD, signed by the police chief and city manager, which outlines the Board's policies and procedures and defines the terms of their relationship and their mutual obligations. Many subject matter experts on civilian oversight of law enforcement see this MOU as vital to the ultimate success of the Board, as effective oversight requires both the community and the police department to be meaningful participants in the process. This MOU is intended to clearly memorialize how the APD will collaborate with the Board and serves as an agreement that allows the APD to participate fully in the process by which the department will be held accountable.

In addition, the draft ordinance lays out training requirements for the Board members, a review process and standard of review for civilian complaints received by the Board, as well as City supports that will be provided to the Board.

The draft ordinance specifically includes the hiring of an Independent Policing Auditor who will serve as staff to the Board and coordinate the Board's administrative functions. The Auditor will be appointed by City Council and will be independent of law enforcement. The Auditor will be provided with the resources necessary to support its work and all Board operations and will have access to unredacted police files and data in order to make informed recommendations to law enforcement, City Council and the community about policing practices, rules, policies, procedures, directives and outcomes in Alexandria.

The Independent Policing Auditor (the "Auditor") will serve at the pleasure of City Council and will have permanent office space in a City facility, but will not be housed in any Alexandria Police Department facility in order to ensure the independence of the position. The draft ordinance proposes that the Auditor will have the authority to:

- provide the necessary administrative and policy support for the Community Police Review Board, as well as assist the Board with achieving its purpose and in carrying out its scope;
- have authority to hire and supervise and make employment decisions regarding the Auditor's staff within existing City Human Resources systems and City Administrative Regulations;
- be responsible for the independent review of Alexandria Police Department current or proposed policing practices, rules, policies, procedures, directives and outcomes and present findings of such reviews and any resulting recommendations to the Board;
- perform a quality assurance function with the goal of identifying systematic changes that will improve police services to the community;
- create and manage a civilian complaint and case tracking system;
- provide advice to APD during APD's investigation of civilian complaints of APD law enforcement officers and civilian employees, as well in regard investigations of use of force incidents;
- review completed investigations of civilian complaints and use of force by the Alexandria Police Department Office of External Affairs and Professional Responsibility.
- review completed investigations of officer involved shootings by the Virginia State Police or other entity;

- review any disciplinary actions taken that may arise as a result of investigations into civilian complaints of use of force and officer involved shootings.

The proposed hybrid model of community oversight of law enforcement included in the draft ordinance to establish a Community Police Review Board will work to examine systemic patterns in complaints, incidents, conduct, policies, procedures and outcomes in policing in our community. The Board and Auditor will work together to conduct broad evaluations and offer data-driven recommendations for improving police policies, practices, procedures and training in the Alexandria Police Department. This combination can improve trust between police and the community by ensuring public confidence in our police department through accountability and transparency.

FISCAL IMPACT: There will be an annual to-be-determined cost in the range of \$0.3 million to \$0.5 million to employ professional staff to support the Community Policing Review Board, including but not limited to the Independent Policing Auditor, as well as costs to establish the Board and provide ongoing support to the Board and Auditor.

ATTACHMENTS:

1. Draft Community Policing Review Board Ordinance
2. Alexandria City Council Resolution 2950
3. Community Police Review Board Legislation Currently Under Consideration by the General Assembly: SB 5035 (Hashmi); HB 5055 (Herring)

STAFF:

Sarah Taylor, Legislative Director
Debra Collins, Deputy City Manager