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Title:	Introduction and First Reading. Consideration. Passage on First Reading of an ordinance to amend Chapter 4 (COMMITTEES, BOARDS AND COMMISSIONS) of Title 2 (GENERAL GOVERNMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended, by adding a new Article AA (INDEPENDENT COMMUNITY POLICING REVIEW BOARD) and to amend Article A (GENERAL PROVISIONS) of Chapter 1 (POLICE PROTECTION) OF Title 4 (PUBLIC SAFETY) of The Code of the City of Alexandria, Virginia, 1981, as amended, to add Sections 4-1-5 (INDEPENDENT POLICING AUDITOR/INVESTIGATOR) AND 4-1-6 (INDEPENDENT POLICING AUDITOR/INVESTIGATOR DUTIES AND RESPONSIBILITIES).		
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Attachments:	1. 21-0794_Attachment 1 CPRB Hybrid Ordinance 03032021, 2. 21-0794_Attachment 2 ResolutionNo2950CondemningRacism, 3. 21-0794_Attachment 3 Senate Bill No 5035 and House Bill No 5055, 4. 21-0794_Attachment 4 SeifeldeinCommunityPoliceReviewBoardPresentation, 5. 21-0794_Attachment 5 CPRBHybridOrdinanceSeifeldeinComments, 6. 21-0794_Attachment 6 changes from 02192021 version, 7. 21-0794_Attachment 7 Law Enforcement Records FOIA, 8. 21-0794_Attachment 8 Examples of Timing Approaches		

Date	Ver.	Action By	Action	Result

City of Alexandria, Virginia

MEMORANDUM

DATE: MARCH 3, 2021

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

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

DOCKET TITLE:
Introduction and First Reading. Consideration. Passage on First Reading of an ordinance to amend Chapter 4 (COMMITTEES, BOARDS AND COMMISSIONS) of Title 2 (GENERAL GOVERNMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended, by adding a new Article AA (INDEPENDENT COMMUNITY POLICING REVIEW BOARD) and to amend Article A (GENERAL PROVISIONS) of Chapter 1 (POLICE PROTECTION) OF Title 4 (PUBLIC SAFETY) of The Code of the City of Alexandria, Virginia, 1981, as amended, to add Sections 4-1-5 (INDEPENDENT POLICING AUDITOR/INVESTIGATOR) AND 4-1-6 (INDEPENDENT POLICING AUDITOR/INVESTIGATOR DUTIES AND RESPONSIBILITIES).

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ISSUE: Consideration of an ordinance (**Attachment 1**) to establish an Independent Community Policing Review Board with authority to investigate certain defined matters, review other matters investigated by the APD, and consider and make recommendations on Police Department policy and to establish a new City Council appointed position known as the Independent Police Auditor/Investigator.

RECOMMENDATION: Adopt the proposed ordinance establishing an Independent Community Policing Review Board on first reading and set the ordinance for second reading, and public hearing on March 13, 2021 and, after public hearing, adopt the proposed ordinance.

BACKGROUND: On June 9, 2020, City Council unanimously adopted Resolution 2950 (**Attachment 2**), which condemned police brutality and systemic racism; reaffirmed that Black Lives Matter; and stated Council's intent to establish a community policing 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 policing review board in Alexandria.

Council's direction to City staff echoed 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.

New General Assembly Adopted Community Police Review Board Legislation: Concurrent with staff work on this issue, the General Assembly held 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 was passed by the General Assembly - SB 5035 (Hashmi) and HB 5055 (Herring) (**Attachment 3**) - which authorizes the governing body of a locality to establish a law enforcement civilian oversight body. This legislation is effective on July 1, 2021. A law-enforcement civilian oversight body established pursuant to this law may receive, investigate, and issue findings on complaints from civilians regarding conduct of law-enforcement officers and civilian employees of a law-enforcement agency serving under the authority of the locality. The civilian oversight body may investigate and issue findings on incidents, including the use of force by a law enforcement officer, death or serious injury to any person held in custody, serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law-enforcement officers or civilian employees of a law-enforcement agency serving under the authority of the locality. The legislation also sets forth other duties and responsibilities as reasonably necessary for the oversight body to effectuate its lawful purpose as provided for in this section to effectively oversee the law-enforcement agencies as authorized by the locality. Any person currently employed by a law-enforcement agency is ineligible to serve on a civilian oversight body established pursuant to this legislation. However, a retired law-enforcement officer may serve on such law-enforcement civilian oversight body as an advisory, nonvoting ex officio member, if such an individual meets certain specified criteria.

Additionally, the legislation affords civilian oversight bodies the authority to hold hearings, request the attendance of witnesses and the production of books, papers, and other evidence necessary to perform its duties.

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If after making a good faith effort, the oversight body is unable to voluntarily obtain such attendance or production, it may apply to the circuit court for the locality for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence, and the court may, upon good cause shown, cause the subpoena to be issued. Any person so subpoenaed may apply to the court that issued such subpoena to quash it.

The legislation defines "law-enforcement officer" to mean any person, other than a chief of police, who in his official capacity (i) is authorized by law to make arrests and (ii) is a non-probationary officer of a police department, bureau, or force of any political subdivision, or a campus police department of any public institution of higher education of the Commonwealth, where such department, bureau, or force has three or more law-enforcement officers. "Law-enforcement officer" does not include a sheriff or deputy sheriff or any law enforcement officer who has rights afforded to him/her pursuant to the provisions of Chapter 5 (з 9.1-500 et seq.). The legislation has a July 1, 2021 effective date.

Initial September 2020 Proposal and Council Discussion: Per Council's direction in Resolution 2950, staff conducted significant research and outreach on the subject of civilian oversight of law enforcement, including outreach to national 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 oversight of policing in Alexandria, specifically. At Council's September 8, 2020 Legislative Meeting, staff presented this research as well as a draft ordinance to establish a Community Policing Review Board and a new Independent Policing Auditor position in support of civilian oversight of policing in Alexandria. (**docket item link here <https://alexandria.legistar.com/LegislationDetail.aspx?ID=4632013&GUID=BA356EC8-7BBB-49DE-BC5C-90CC6D97D4E2>)**

The draft ordinance proposed a hybrid model of civilian oversight of policing, with a review/auditing focus for the Board at its outset. While some police reviews boards focus just on complaints and use of force incidents, it was proposed on September 8 by staff that Alexandria put in place a Community Policing Review Board that would focus on providing feedback and input not just on individual cases, but also other policing policies, directives, programs and patterns. This broader mandate was seen as potentially being more impactful on the outcomes of policing in our community.

As community oversight bodies are intended to be iterative, staff noted that the proposed model lent itself to a natural evolution of the Board as it accomplished its initial purpose. Staff envisioned the September proposal to be the beginning of an iterative process that would allow the Board to 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. The draft ordinance was proposed as the first step in the evolution of civilian oversight of law enforcement in Alexandria, while demonstrating a long-term and comprehensive commitment to transparent police oversight, equitable policing, and accountability in Alexandria.

In addition to staff research on this issue, Councilmember Seifeldein produced and provided a significant amount of research on models and examples of civilian oversight of law enforcement, including data and fiscal information. This information was valuable to staff in its ongoing work on this issue and has been included in the cache of materials made available to the public for review and consideration with regard to this ongoing effort. That information is attached to this docket memo for your information (**Attachment 4**).

At the close of the discussion of the proposal at the September 8 Council Meeting, Council received the report and sent staff back for additional research on options, with a focus on the proposed Board having investigative authority. Some members asked for staff to prepare a second ordinance for a civilian oversight body with an

investigative/auditor "hybrid" model including subpoena power. However, the majority of Council members were not prepared to endorse that model without more information on other options and models and wanted to put more information out to the public on other options, including fiscal considerations. Council then requested that staff return to Council with the range of options available with regard to civilian oversight of law enforcement, to include staffing and fiscal considerations.

On January 12, 2021, staff presented the different options for review boards to Council. (**docket item link here <https://alexandria.legistar.com/LegislationDetail.aspx?ID=4746935&GUID=C2777D5F-CCAF-42CF-AF0D-39624B468E37>**). Council had an in-depth discussion regarding the different options and what would be best for Alexandria. At the conclusion of the discussion, City Council voted, by a vote of 4-3, to direct staff to prepare an ordinance that will establish a community policing review board ("Board") that will have the authority to investigate assigned matters defined in the ordinance, including incidents involving death, use of force, and severe misconduct. As part of that authority and as authorized by the State law, the Board would also be able to subpoena witnesses and documents in order to obtain the information they need for such investigations. Additionally, the Board would have the authority to review any investigations conducted by the Alexandria Police Department (APD) on all other matters involving police conduct. Lastly, the Board would have the authority to review APD policy and procedure and provide recommendations regarding such policies.

On February 23, 2021, staff posted a proposed ordinance that incorporated City Council's requested approach on the City's website for the public to view and provide feedback. Staff held two community meetings on February 27 (33 participants) and on March 3 (25 participants) where staff answered a number of questions regarding the proposed approach. Those questions and answers were also posted on the website. Additionally, on March 1, the staff opened a comment board for the community to provide comments on the proposed ordinance. We will provide those comments to City Council directly as we compile them. All materials on the website, including the meeting videos, questions asked at the meetings and answers to those questions, and background material can be viewed by the City Council on the Community Policing Review Board Webpage <https://www.alexandriava.gov/manager/info/default.aspx?id=120523>. The ordinance was translated into Spanish and Amharic, as were the two community meetings. In addition to the proposed ordinance, Councilman Seifeldein provided a number of proposed changes to the ordinance which were also posted on the website, with translated version as well, for public input. The ordinance with his proposed changes shown in red is attached for your information and review (**Attachment 5**).

DISCUSSION:

City Council is in the unique position to be able to establish this new body and its processes for Alexandria in a way that works best and is most appropriate for Alexandria. In choosing to take a hybrid model-approach, City Council has noted its willingness and ability to choose the best parts of the existing models and approaches and tailor the various components of our system to the particular needs and characteristics of our community. In taking this hybrid approach, Alexandria's Community Policing Review Board (CPRB) will be appropriate for our community, likely unique to Alexandria, and will have the scope and authority necessary to be responsive to the needs, concerns, perceptions and problems regarding policing our community.

One very important aspect of the proposed Board is its independence from other City Departments. First, the Board is appointed by City Council and is directed by the provisions of the code adopted by City Council. Additionally, the Policing Auditor/Investigator position which will staff the Board is appointed by City Council, not the City Manager. There are very few positions in the City that are appointed directly by the City Council but it is important for this one to be in order to clearly establish its independence from the other City Departments. However, equally as important is establishing a good relationship between the City Departments and this Board and its staff so that the two are working together to achieve City Council's goal of transparency

in policing.

Additionally, it is important to note that the investigations undertaken by the CPRB, as well as investigations reviewed by the CPRB, would be administrative investigations, not criminal investigations. Most if not all serious incidents involving police officers have two, separate investigations which are very distinct from each other and should be kept separate. It is the administrative investigations, not the criminal investigations, which the CPRB would undertaking for those matters assigned to the Board in the draft ordinance, if the City Council adopts the ordinance.

The administrative investigation is an internal city investigation to determine whether a violation of City policy or administrative regulations occurred. As an administrative investigation, there are fewer procedural requirements that must be met. These administrative investigations today are performed by the APD Office of External Affairs and Professional Responsibility (OEAPR).

The criminal investigation is to determine whether a crime has been committed. These criminal investigations have certain limitations on what the investigator can compel and must comply strictly with procedures for preserving the crime scene and evidence therein. Criminal investigations are performed by trained criminal investigators. Today, these investigations are either performed by an APD criminal investigator or, for officer involved shootings, they are sent out to the Virginia State Police for investigation by their criminal investigators to ensure independence. A new Northern Virginia regional incident response team is being implemented so that participating jurisdictions in the region can use a reginal response team comprised of personnel from various regional police departments to assist with these investigations and the City could become part of that team should it choose. These processes of how the City undertakes criminal investigations will continue whether or not City Council adopts a CPRB.

Below we will discuss some of the major terms of the proposed ordinance. Since the February 19, 2021 version sent to Council and posted on the City's website for comment, staff has reviewed the ordinance and has made some updates to address mostly non-substantive clarifications such as moving provisions to sections of the ordinance where they make more sense or deleting repetitive provisions. In addition, a few potentially substantive clarifications are noted specifically in the discussion below. For Council and the public's information, a redline showing all of the changes from the February 19, 2021 version of the ordinance is attached (**Attachment 6**). Staff analysis of Councilman Seifeldein' s proposed changes are noted in the discussion below.

1. Board Scope and Purpose and Coordination with Other City Processes 2-4-221

The first few sections of the proposed ordinance lay out the overall purpose for this new Board and emphasizes the need for a Board that performs fair, timely and objective investigations and reviews of incidents involving police as well as an evaluation of policies, practices, procedures and outcomes in Alexandria. This will provide meaningful assessments and corrective recommendations intended to remedy discriminatory practices and ensure protection of all communities.

In Section 2-4-221(c) the ordinance proposes to require a memorandum of understanding (MOU) between the Board and the APD. This MOU is important because it will develop the relationship between the Board and APD, establish the expectations and responsibilities of each party, and set the stage for a productive working relationship. The ordinance sets the law on what the Board is allowed to do and what APD is required to do in

order to comply with that, however the MOU will provide the practical working relationship for the two agencies to comply with that law.

Section 2-4-221(d) makes clear that the Board will be given access to all APD records. This section does however include caveats in order to protect the confidentiality of certain documents and to address the timing with criminal investigations. See sections 3 and 10 below for more detailed discussion regarding these policy questions.

Section 2-4-221(e) of the proposed ordinance indicates the Board will be provided with an annual budget, subject to City Council's appropriation, in order to carry out its scope. This section goes on to list that the Board shall use the budget for its purpose and scope, to carry out the MOU with the APD, the appropriation approved by Council, and city procurement regulations.

Councilman Seifeldein Comment:
2-4-221(c): Councilman Seifeldein has raised a concern that the MOU will give the APD and the City Manager an opportunity to control the Board, and/or the APD may refuse to enter into the MOU. First, the MOU has to comply with the law which makes the Board independent so nothing in the MOU may remove that independence. Second, the law says the MOU is required to be entered into, therefore the APD may not refuse to enter into it. Lastly, the proposed ordinance has provisions (see 2-4-225(b)) that require that all City Staff cooperate with the Board. Therefore, staff does not see any way that the MOU could be used to prevent the Board from doing its work.

2-4-221(d): Councilman Seifeldein has commented that the APD should be required to provide the documents regardless of the timing of a criminal investigation. He comments "the purpose here is preserve eyewitness and document testimony while it is still fresh and enhance the Boards efficiency."

2-4-221(e): Councilman Seifeldein does not believe the MOU should be noted in the matters that the board must expend its funds consistently with because he believes that is "cumbersome and unnecessary".

2. Board Makeup 2-4-222

Section 2-4-222 of the proposed ordinance proposes seven (7) voting members of the Board and explicitly states that the members should be chosen based on their expertise and experience relevant to the duties of the Board. The expertise or experience can be anything from professional experience to personal, "lived" experience with regard to interactions with the police department. The ordinance goes on to require at least 3 members from historically, racially or socially marginalized communities that have experience with disparate policing and at least one member who represents an organization that advocates on behalf of such community members. The remainder of the voting members could be anyone the City Council believes has the expertise or experience which will give City Council some flexibility in choosing members. Additionally, all members need to demonstrate the fairness, integrity and objectivity needed to be able to review and investigate these important community matters. Lastly, the ordinance proposes to include one ex-officio, non-voting member with past experience with law enforcement. The proposed ordinance limits this further to say it cannot be a current employee or family member of a current employee of APD. As required by the State law, this member would be non-voting. Therefore, the Board as proposed will be made up of seven voting members and one non-voting member.

Councilman Seifeldein Comment:
Councilman Seifeldein has noted that the requirement that they have expertise and experience may be limiting. He proposes to delete those words. Additionally, he would like to note that the members are appointed in City

Council's sole discretion. Lastly, in regard to the ex-officio member with law enforcement experience, Councilman Seifeldein proposes that this person should be out of law enforcement for at least 5 years before they can be appointed to the Board.

3. Confidentiality of Documents in an Investigation - Section 2-4-223(b)

Another important policy consideration is whether documents used for an administrative investigation by the CPRB should remain confidential. While a main purpose of the Board is to give the community a view into what have been only internal investigations, there are still important considerations as to why certain information should remain confidential. This would mean the Board can see the information in its review or as part of its investigation, however, they would not make those documents available to the public when presenting their findings, conclusions and recommendations to the public.

The current draft of the ordinance indicates that disciplinary actions, memos, and reports; statements by an APD employee; and criminal investigative files, shall remain confidential. This is consistent with the practice today. It is expected that a summary report of the investigation and the conclusions of the Board would be released and discussed with the public. While FOIA does give the locality the discretion to release documents that are not required to be released under FOIA (except, potentially, parts of the criminal investigative file), there are a number of reasons why it is the city's current practice to keep these documents confidential including:

- Releasing information about disciplinary actions subject the city to potential liability for due process and defamation cases;
- Releasing statements made by APD employees will hinder the Board's ability to get useful and fuller statements from the employees if the employee knows it could be made public;
- There are portions of criminal investigatory files that are required by law to be kept confidential (see list of mandatory, discretionary and prohibited criminal/police matters that can be disclosed attached as **Attachment 7**).

Councilman Seifeldein Comment:

Councilman Seifeldein has raised the concern that all documents obtained by the Board should be made public because he believes making these documents public is a fundamental purpose of the Board, he states specifically, "because it is contrary to one of the Board's core existence, inform the public. This seems to prohibit the Board from releasing details of their findings."

4. Board procedures 2-4-224

The Board will be subject to the same general code sections that apply to all Boards and Commissions in Title 2, Chapter 4 of the City Code unless amended herein. Section 2-4-224 notes specifically that the Board will meet at least 4 times per calendar year, that the Board shall comply with FOIA regarding open meetings as well as taking minutes, and that the Board shall be required to have a quorum of five members rather than the more typical four members before they may act. Staff proposes to include a quorum of five members after seeing this in examples of Board procedures in other areas and believes it would be appropriate to make sure that more than just a simple majority must be present in order for the Board to take action. Since this is a voluntary Board that has responsibility for a very important community matter, the higher quorum requirement is a best practice.

Councilman Seifeldein Comment:

Councilman Seifeldein believes that the quorum requirement should not be different than that required for City Council which is four rather than the proposed five.

5. Staffing - 2-4-225

The proposed ordinance also includes the adoption of new City Code Sections 4-1-5 and 4-1-6 to establish the position of Policing Auditor/Investigator, who would be appointed by City Council. The duties for the new position would include staffing the Board as well as independent authority to review/audit APD actions and report those to the Board. This position would be the main staff support for the Board. The Policing Auditor/Investigator shall also be authorized to hire an additional investigator to assist in the investigative duties of the Board. Lastly, the proposed ordinance recommends that the City Attorney's office provide legal advice to the Board, unless a conflict of interest arises that would preclude effective representation, at which time outside counsel would be obtained for the Board or Policing Auditor/Investigator. The City Attorney's Office also represents other Boards and commissions that are appointed by City Council and believes that as a general rule, conflicts should not arise as long as the City Code defines the roles and responsibilities clearly. Staff believes this is an efficient way to move forward but still take into consideration outside counsel may be necessary.

Lastly, Section 2-4-225 makes clear that City staff will also cooperate with the Board and provide support in other areas such as providing a website and other resources to ensure the Board

Councilman Seifeldein Comments:

Councilman Seifeldein has commented that legal services should be provided by outside counsel only rather than from the City Attorney's office. Additionally, Councilman Seifeldein would like to remove the term "unreasonably" in the sentence prohibiting the City from interfering in the Board's decisions (2-4-225(b)(iii)). Lastly, in Section 4-1-5 establishing the Policing Auditor/Investigator, Councilman Seifeldein would like to add that this appointee shall not be housed on the same floor as the City Manager's office.

6. Board Training - 2-4-226

Section 2-4-226 of the proposed ordinance establishes minimum requirements for training for Board members including national level training for criminal oversight, staff level trainings on APD procedures, and at least two ride-along sessions with APD patrol operations per calendar year. Staff believes this training is important in order to provide Board members with the information they need about City and APD operations to make informed decisions regarding investigations and policies and procedures.

7. Board duties 2-4-227

Section 2-4-227 is the main section listing the actual duties and responsibilities of the Board. This section includes (a) a requirement for a Board Readiness resolution; (b) a process for complaint intake; (c) definition and description of the Board's review responsibilities; (d) definition and description of the Board's investigation responsibilities, and (e) definition and description of the Board's policy review responsibilities. Each will be discussed individually below.

(a) Board Readiness Resolution: The ordinance proposes that the Board's responsibilities under this ordinance do not start until such time that the Board is fully appointed, has the necessary staff in place, has the necessary processes in place and the MOU with the APD has been executed by all parties. The Board will pass a resolution indicating its readiness which will then initiate the transfer of complaint intake and new investigation assignments. Staff recommends this approach so that there are no glitches in the transition between the current processes and the new processes.

(b) Complaint intake: The ordinance proposes that the Board establish a process for taking in complaints and notes the information that will be taken in on the form. The complaints may come into the Board, or they may

come into the APD through existing complaint intake procedures and then will be transferred to the appropriate place for any necessary administrative investigation.

Councilman Seifeldein Comment:
Councilman Seifeldein would like the complaint form to note that the complaint review will be processed even if all of the information on the form is not provided.

(c) Responsibility for Review of APD Investigations: For all investigations other than those assigned to the Board under Section (d), the APD will continue to conduct the administrative investigation. The Board will establish criteria that will establish which APD investigations it chooses to review. After review and public hearing, the Board will then determine if 1) it concurs with the APD determination; 2) that it believes the findings are not supported by the information and recommend further review; 3) advise that the investigation is incomplete and needs further review.

Councilman Seifeldein Comment
The Board should have more options to act on reviews.

(d) Responsibility for Investigation: The proposed ordinance gives the Board authority for the investigation of incidents involving death, certain severe use of force incidents, and severe misconduct. Each of these terms is specifically defined in the ordinance in order to make it clear where the line is drawn between APD's responsibility to do the administrative investigation and the Board's responsibility. The investigations assigned to the Board will be done by the Policing Auditor/Investigator and his/her staff. The investigation will then be reported to the Board and after consideration and public hearing, the Board will 1) dismiss the complaint, 2) refer the complaint to the Commonwealth Attorney for criminal review; or 3) recommend disciplinary action be taken by the Chief of Police. If the Chief declines to implement the recommended disciplinary action, the Chief must provide the City Manager, City Council and the Board with written rationale why the recommendation is not being implemented. Staff recommends this approach as it appropriately leaves the determination for discipline with the City Manager or his designee in accordance with the City Charter, however it provides the transparency of decisions and their rationale.

The section regarding investigative power also includes the power to issue subpoenas for documents or witnesses if needed by the Board. The state law has provided specific authority for this subpoena power and the proposed ordinance provides the authority as written in the state code. As discussed, subpoena power is a power seen in many Boards across the country, especially those with investigative authority, but the experience has been that the power is not widely used. Staff is optimistic the Board will receive all of the information that is needs without having to resort to this power. While it is important that the Board have all information to conducts its investigation, a balance needs to be struck with the community members involved who may feel violated by the Board forcing them to provide information or requiring them to testify.

Councilman Seifeldein Comments:
Councilman Seifeldein believes that the use of force definition should be changed from an application of force sufficient to create a *substantial* risk of death, to an application of force sufficient to create a *reasonable* risk of death.

Councilman Seifeldein proposes amending the subpoena section so that it does not require a majority vote of the Board and add the word shall to the Policing Auditor/Investigator's responsibility to act on the Board's request. Additionally, he would like to add that if the law allows for it, if a Board member or the Policing

Auditor/Investigator is an attorney, they can issue an attorney issued subpoena. In response to Councilman Seifeldein's question, staff offers that the state law that allows attorney issued subpoenas (Rule 4:9A of the Rules of the Supreme Court, Virginia Code Section 16.1-89, and Virginia Code Section 16.1-265) only allows attorney issued subpoenas when there is a civil proceeding pending in Court. The Board investigations will not be civil proceedings pending in Court. Additionally, the authorizing language for the Board to have subpoena power does not address attorney issued subpoenas. Therefore, there is no state law authority for attorney issued subpoenas in these cases.

Councilman Seifeldein also believes additional actions need to be able to be taken by the Board.

(e) *Board Policy Review:* The proposed ordinances gives the Board the authority to review police policy and procedure such as ADP administrative directives, reports and data issued by the APD, and conduct community outreach related to the review and reform of Policing practices, policies and procedures in Alexandria. This function is the Board's auditing function and provides an important role for the Board to play in overall City policies and approaches. The proposed ordinance authorizes the Board to make recommendations to the City Manager and APD regarding policy matters and again includes the provision that if the APD does not implement the recommendation it must provide the rationale for that decision in writing.

8. Applicable Law - 2-4-228

Section 2-4-228 of the proposed ordinance notes that the Board must comply with all provisions of Federal, State and local law and all City Policies. Staff is recommending some changes to this section to clarify that the Board must comply with City policies to the extent that the policies are not amended by the establishment of the Board. Staff also recommends deleting the previous section b of this section. That section specifically referenced the AR's which can be covered instead just under the general reference to City Policies. Lastly, the previous section (c) of that section has been moved to Section 2-4-223 because it relates to documents and that is more appropriately placed with the other provisions related to documents.

9. Limitations on complaints filed after a certain time - 2-4-229(a)(i) and (ii)

The proposed ordinance excludes from the Board's review and investigation complaints that were already submitted to the City prior to June 9, 2020 which is the day the City decided to implement a review Board, and also complaints that involve incidents that happened more than six (6) months prior to the time the complaint was made. Staff has recommended these limitations based on what has been noted in other jurisdictions in order to keep the Board forward focused and to ensure the evidence in the cases is current for the investigation. However, the current practice of the APD is to conduct administrative investigations on matters whenever the matter is raised to the APD without a time limitation. Therefore, the Council may want to consider amending or deleting these two exclusions.

Councilman Seifeldein Comment:

Councilman Seifeldein would like to either remove these exclusions, or would like to change June 9, 2020 to June 9, 2019, and change 6 months to two years.

10. Timing of Investigations - Section 2-4-229(a)(iv)

An important consideration is whether the administrative CPRB investigations must wait to be conducted until after the criminal investigation is concluded. By way of background, with serious offenses such as use of force and incidents involving a death, typically the incident itself will initiate a criminal investigation and that investigation starts basically immediately after the incident occurs. Less often, but sometimes, an incident will occur that causes an administrative investigation and the administrative investigation will reveal the need for a

criminal investigation. Under today's process, if a criminal investigation is initiated, the administrative investigation is put on hold until the criminal investigation is completed. The criminal investigation is completed either when the Commonwealth Attorney chooses not to bring charges, or at the conclusion of the criminal trial and potential appeals if he does press charges. Today, some administrative investigation may start as soon as the Commonwealth Attorney makes the decision to bring charges but that is only because the administrative investigations remain confidential in the City and are not made public.

There is no law that staff is aware of that directly prohibits administrative investigations from happening concurrently with criminal investigations. The current draft of the ordinance proposes to have the CPRB investigation hold off until after the criminal investigation is completed. Staff made that recommendation for the following reasons:

- The administrative investigation must be completely walled off from the criminal investigation so that it is clear that the administrative investigation has not informed and thereby possibly tainted the criminal investigation. As discussed, criminal investigations have very clear procedural requirements and if information from the administrative investigation does not meet those requirements and leaks into the criminal investigation, the criminal matter will likely be thrown out. This could jeopardize a criminal conviction of a bad act by a police officer and could jeopardize a victim's interests in receiving some measure of justice.
- Criminal investigators and administrative investigators may want to interview the same people which could cause inconsistent information to be produced because the questions are asked in a slightly different way, or the witnesses may get confused by the different investigations and not be as effective. This also could jeopardize the criminal investigation.
- Any release of administrative investigative information before a criminal matter is adjudicated could also affect the ability to find an objective jury and complicate successful prosecution.
- Statements compelled by the City in an administrative investigation could raise Garrity issues which would complicate effective criminal prosecution.

In the proposed ordinance we have included updated language for this section from the previous version in order to clarify this approach. Jurisdictions across the country address this in different ways. **Attachment 8** includes a list of examples from other jurisdictions across the country for your information.

Councilman Seifeldein Comment:

Councilman Seifeldein has raised a concern that if the administrative investigation has to wait until after the criminal investigation the evidence may not be preserved depending on how long the criminal investigation takes.

11. Ordinance to be Reviewed - Section - 2-4-230(a)

Given that this is a new program for Alexandria, City Council has discussed, and the ordinance proposes, having a review of the ordinance after two years. The ordinance proposes having that review conducted by the City Manager in consultation with the Board, the Policing Auditor/Investigator, community stakeholders, and the APD and that a report regarding the effectiveness of the ordinance and recommendations for improvement would be submitted to City Council. Staff believes this will be a good opportunity to ensure that the program is working as City Council intended it to and to address procedural matters that may not be able to be anticipated right now without the benefit of experience with this type of program.

Councilman Seifeldein Comment:

Councilman Seifeldein would like for the Board to submit its own report rather than coordinating with the City Manager to provide this report.

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FISCAL IMPACT: The establishment of the Board and the Policing Auditor/Investigator and its staff will have a financial impact on the City. Based on information from other boards we estimate an annual cost of $600,000 (which has been included as a contingent in the FY 2022 proposed budget) broken down as follows:

Policing Auditor/Investigator: $200,000
Investigator (likely 1): $100,000
Outside Counsel Costs: $75,000
Board budget: $125,000
City Attorney's Office FTE: $100,000

ATTACHMENTS:

Attachment 1: Proposed Ordinance
Attachment 2: Resolution 2950
Attachment 3: SB 5035 (Hashmi) and HB 5055 (Herring)
Attachment 4: Councilman Seifeldein Memo regarding review boards
Attachment 5: Councilman Seifeldein Proposed Changes to Posted Ordinance
Attachment 6: Comparison showing changes from Publicly posted proposed ordinance
Attachment 7: mandatory, discretionary and prohibited disclosed or criminal/police matters
Attachment 8: Examples of Timing of Investigations in other jurisdictions

STAFF:

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Michael Brown, Chief, Alexandria City Police Department
Debra Collins, Deputy City Manager