



Legislation Text

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City of Alexandria, Virginia

MEMORANDUM

DATE: JANUARY 6, 2021

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

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

DOCKET TITLE:

Receipt of Information Regarding Options for Civilian Oversight of Policing in Alexandria and the Models for such an Oversight Body.

ISSUE: Presentation of information regarding the options for civilian oversight of policing in Alexandria and the models for such an oversight body.

RECOMMENDATION: Direct the City Manager (1) to establish a community outreach and discussion process utilizing the attached options and models for civilian oversight of policing as the basis for that community discussion; (2) to use collected input from the City Council's discussion and the community outreach to inform an updated draft ordinance; and (3) to bring a proposed ordinance forward if feasible based on the length of public outreach for first reading at the March 9, 2021 City Council legislative meeting, and public hearing and adoption at the March 13, 2021 Council Public Hearing.

BACKGROUND: On June 9, 2020, City Council unanimously adopted Resolution 2950 (Attachment 1), 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 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 2) - which authorizes the governing body of a locality to establish a law enforcement civilian oversight body. 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 and, if after making a good faith effort to obtain, voluntarily, the attendance of witnesses and the production of books, papers, and other evidence necessary to perform its duties the oversight body is unable to 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 pursuant to the provisions of Chapter 5 (3 9.1-500 et seq.). The legislation has a July 1, 2021 effective date, with the expectation that the General Assembly will work during the 2021 Session to expand the authority of civilian oversight bodies to include Sheriff's Departments employees in the definition of "law enforcement officer."

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 nationally 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, specifically. At

Council's September 8, 2020 Legislative Meeting, staff presented this research as well as a draft ordinance (attachment 6) to establish a Community Policing Review Board and new Independent Policing Auditor position in support of civilian oversight of policing in Alexandria.

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 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 and programs. 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 lends itself to a natural evolution of the Board as it accomplishes 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, but demonstrates 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 will be included in the cache of materials made available to the public for review and consideration with regard to this ongoing effort.

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. 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.

DISCUSSION: Per Council's direction, City Staff has prepared additional research and information regarding the range of options for civilian oversight of law enforcement in Alexandria and the models for such an oversight body. Below is a detailed explanation of the different options. Attached is a chart that shows the options side by side and provides a method for comparing the options.

Current Investigation/Oversight of Law Enforcement in Alexandria

The Alexandria Police Department (APD) Office of External Affairs and Professional Responsibility (OPR) is responsible for the internal review of all complaints concerning the actions of police employees, including law enforcement officers and civilian employees of the APD. The OPR is responsible for recording, registering, and controlling the investigation of complaints against, or alleged or suspected misconduct of employees of the Alexandria Police Department.

Complaints: Complaints - both internal and external - may trigger investigations of APD law enforcement officers and civilian employees of the APD. Citizen complaints about the actions of a police or non-sworn

employee can be made using an online complaint form, by contacting the employee's supervisor by phone, by contacting the OPR by phone, in person or by mail at the APD Internal Investigations Section at APD headquarters, or using the Bias Policing Hotline. All complaints are restricted to specific allegations of misconduct, violation of the law, or of Department and other lawful orders and do not include those incidents of differences of opinion relating to matters that are subject to being resolved in court. According to APD's Annual Statistical Overview - Complaints Against Police Employees, in 2019 there were 91 total internal investigations, 73 sustained complaints, 19 formal citizen complaints, and 5 complaints sustained regarding conduct toward citizens.

If a complaint is made in person, OPR works to obtain a written or recorded statement from the complainant at the time the complaint is lodged; regardless of against whom the complaint is made. The complainant may choose to remain anonymous but whenever possible, APD will obtain all identifying information from the complaining party, including telephone number and email address. Internal complainants may opt to report directly to OPR if they do not feel comfortable making the complaint to an immediate supervisor.

When an investigation is initiated based on a complaint, it is the investigating party's responsibility to conduct exhaustive interviews with all parties with knowledge of the alleged misconduct. This includes the employee involved, witnesses (civilian or sworn), and the complaining party. All interviews are recorded whenever possible.

The Chief of Police is notified by OPR of all complaints - internal or external - regarding:

- discharge of a weapon other than at an approved range
- allegations of brutality
- allegations of criminal activity
- allegations of sexual harassment
- allegations of biased policing
- other complaints of a "sensitive or controversial nature"

Investigations: The Alexandria Police Department (APD) handles most investigations of actions by law enforcement officers and civilian employees of the APD internally. The APD primarily handles three types of investigations: Unit Level Inquiries (Group I and II policy violations); Administrative Investigations (Group I, II and III violations); and Use of Force Investigations.

Unit Level Inquiries (ULI) are initiated for Group I and II policy violations as defined in the City Administrative Regulations (AR 6-20, attachment 4) and are handled by the offender's supervisor. Counseling and retraining are the only levels of discipline applicable for a ULI. Group I offenses include behaviors and job performances which are not severe in nature but which require correction in the interest of maintaining a productive and well-managed work force, including unsatisfactory attendance or tardiness, smoking in unauthorized areas, loafing, horse play, and the wearing of inappropriate attire. Group II offenses include behaviors and job performance problems which are severe and form a reasonable basis for more stringent initial disciplinary action, including insubordination, performing personal work on City time or with City equipment, working under the influence of alcohol or drugs, and use of foul, obscene, profane, abusive or sexually offensive language toward co-workers, supervisors or the public.

Alexandria Police Department Unit Level Inquiries (2020) - Overview	
Categories	Total Allegations

Traffic Crash	21
Unintentional discharge of weapon/taser	3
Tardiness/AWOL	3
Unbecoming Conduct (Not sustained)	2
Unbecoming Conduct (Sustained)	1
Rude & Discourteous (Sustained)	1
Rude & Discourteous (Not Sustained)	3
Rude & Discourteous (Unfounded)	2
Fail to Keep Official Business Confidential	2
Fail to Keep Official Business Confidential (pending)	1
Improper Social Media Posting	1
Fail to Keep Harmonious Working Relationship	1
Violation of Police Directive (Not Sustained)	3
Property, Evidence, Reporting Violation	4
Knowledge of Laws & Directives	1
Lost/Misplaced Equipment	1
Total	50
<i>Note: While there were 50 total unit level inquiries, there were a total of 53 allegations.</i>	

Administrative Investigations are initiated for multiple Group I or Group II offenses where counseling is deemed to be ineffective or inappropriate. In addition, an Administrative Investigation is initiated for any allegation of a Group III offense of AR 6-20, which include behaviors and job performance problems of such a serious nature that a first occurrence normally warrants termination. An Administrative Investigation is also initiated for any formal investigation as designated by the Chief of Police or his/her designee. Administrative Investigations may result in formal discipline at the direction of the Chief of Police.

When an Administrative Investigation is initiated, OPR notifies the Chief of Police and the commander of the employee that is the subject of the investigation. In addition, they refer possible criminal violations to the appropriate jurisdiction, when appropriate. As a condition of their employment, employees subject to an Administrative Investigation are compelled to speak with the investigating party and any disclosure made to the investigator is not subject to any criminal proceeding (per *Garrity v. New Jersey*). Written statements and/or recorded interviews will be obtained from the employee and witnesses, whenever possible. If the complaint is found to be valid, these statements and other evidence will form the basis for any disciplinary action.

Generally, OPR will investigate all matters involving: the use of deadly force; incidents likely to result in civil litigation; and alleged employee conduct of a real or potentially criminal nature. Some Administrative Investigations are handled by the employee's immediate supervisor or commander. In instances of a criminal allegation, the Criminal Investigations Section will investigate the criminal aspect of the allegation. OPR will conduct a subsequent Administrative Investigation into the policy aspect of the allegation. All Administrative Investigations are routed from the investigating party to the Division Commander of the employee involved, routed through the Bureau Chief, OPR, and then the Chief of Police. All Administrative Investigations must be completed within 45 days.

Outcomes of Administrative Investigations fall within five categories:

1. Unfounded - the allegation is false or not factual.

2. Exonerated - incident complained of occurred but was lawful and/or proper.
3. Sustained - the allegation is supported by sufficient evidence.
4. Not Sustained - there is insufficient evidence either to prove or disprove the allegation.
5. Policy Review - The allegation is true and, although the action of the employee was within existing policy, the policy should be reviewed.

All disciplinary actions as a result of an Administrative Investigation are determined by the Chief of Police and implemented through OPR.

Alexandria Police Department Administrative Investigations (2020) - Overview		
Categories	Total Allegations	Outcome
Excessive Force	1	Dismissal of Employee
Failure to Properly Investigate Use of Force	3	Written Reprimand, Minor Suspension, Major Suspension
Repeated tardiness/AWOL	7	Minor & major suspensions, 1 pending
Untruthfulness	2	Dismissal of Employee
Biased Policing	1	Exonerated
Unbecoming Conduct	3	Sustained, Minor Suspensions
Failure to Properly Supervise	1	Written Reprimand
Failure to Pay Debts	1	Not sustained
Neglect of Duty	2	Dismissal of Employee (2)
Violation of Law	4	Dismissal of Employee (2), Minor Suspensions
City AR Violation - Virginia Traffic Code (threat to life)	1	Pending
Violation of Police Directive - Search procedures	2	Not sustained
Other Minor Policy Violations	9	Varies
Total	37	
<i>Note: While there were 26 Administrative Investigations, there were a total of 35 allegations.</i>		

Note that a number of Group III violations that currently receive an Administrative Investigation could be categorized as “abuse of authority” or “severe misconduct” including, but not necessarily limited to:

- Falsifying records such as, but not limited to: vouchers, travel records, reports, insurance claims, time records, leave records, employment applications or other official City documents.
- Acts of physical violence, fighting or endangering the health or safety of others.
- Violating safety rules or the Virginia Traffic Code where such a violation poses a threat to life.
- Use of undue influence to gain or attempt to gain promotion, leave, favorable assignment or other individual benefit.
- Unauthorized possession or use of firearms, dangerous weapons or explosives on the job.
- Threatening or intimidating subordinates, fellow employees, supervisors or members of the public
- Verbal or other conduct regarding an individual or group that maligns or shows hostility for the individual or group because of race, color, religion, gender, national origin, age, disability, or sexual orientation

- Criminal or other misconduct occurring on or off the job which is related to job performance or is of such a nature that to continue the employee in the assigned position or in any City employment capacity would constitute negligence in regard to the City's duties to the public or to other City employees.

Use of Force investigations are initiated following the use of OC (“pepper”) spray, baton, electronic control weapon (Taser), a firearm, or a weaponless use of force that results in an injury, a complaint of an injury, or a complaint of excessiveness and/or brutality. However, the Virginia State Police conducts all criminal investigations related to the use of potentially lethal force by members of the APD. This is a reform implemented by the Police Chief in recent years.

All Administrative Investigations involving the use of potentially lethal force are investigated by the APD Office of Professional Responsibility (OPR). Investigations involving non-lethal uses of force are typically conducted by the involved employee’s supervisor but can be conducted by OPR at the direction of the Chief of Police. The investigation is routed through the employee’s chain of command and is ultimately determined to be “Within-Policy” or “Not Within-Policy. All use of Force Investigations must be completed within 30 days.

Review by Alexandria Human Rights Commission: Since 1991, the Alexandria Human Rights Commission (AHRC) is tasked with reviewing all cases of excessive force, demeaning language, and harassment involving APD law enforcement officers or civilian employees. 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. The AHRC has the authority to hold hearings and “to request, with the approval of the City Manager, that a City department head furnish to the Commission information in the possession of the department that is relevant to the duties of the Commission.”

In addition, the Executive Committee of the AHRC and Director receive reports on Taser use and have reviewed all Taser deployments since the inception of the program. In the event of a police-involved shooting, the APD Chief meets with AHRC after the Commonwealth’s Attorney and APD Chief have each completed their investigation. Finally, the Vice Chair of the Commission who is assigned external affairs, ex officio, is notified whenever there is a suspected hate crime in the City, which enables Commissioners to reach out to the victim(s).

In general, the AHRC has established positive relationships over the years with the Chiefs of Police in their role. However, Commissioners have been frustrated by the limitations on evidence they are able to review with regard to incidents they are tasked with reviewing. The AHRC supports establishing a civilian review board with greater authority, or other process for audit and review of law enforcement in Alexandria.

Model A - Review-focused civilian oversight

This simplest, most basic model of civilian oversight of policing (which shall be referred to as law enforcement in this report) involves a civilian board which reviews completed police internal affairs investigations of complaints against law enforcement officers or civilian employees of a law enforcement agency. The board generally offers non-binding recommendations regarding the accuracy, completeness, and impartiality of such investigations and issues recommendations regarding the sufficiency of any discipline resulting from such investigations. They are commonly composed of citizen volunteers and may hold public hearings to collect community input and facilitate police-community communication.

The majority of civilian oversight bodies in the US are review boards, including:

- Fairfax County
- Urbana, IL
- Knoxville, TN
- St. Paul, MN
- Albany, NY
- St. Petersburg, FL

A local example of a review-focused civilian oversight body is the Police Civilian Review Board in Charlottesville, Virginia. The eight-member Board was established in 2018 and is appointed by the Charlottesville City Council. The Board includes a non-voting member with police experience or expertise, three members from historically disadvantaged communities or public housing, and one member who represents an organization, office, or agency that seeks racial/social justice. The Board is headed by an Executive Director who is appointed by the City Manager and who reports to the City Manager.

The duties of the Board include processing complaints, reviewing police practices and internal investigations, issuing findings, writing public reports, and making recommendations. The Board may:

- Develop and administer a process for receiving civilian complaints about the Charlottesville Police Department (CPD);
- Review CPD internal affairs investigations at the request of the civilian complainant;
- Conduct hearings and make findings concerning CPD internal affairs investigations initiated by civilians;
- Organize and conduct community outreach sessions;
- Provide policy recommendations to the City Council and CPD.

The Board receives civilian complaints regarding the conduct of CPD law enforcement, which it forwards to the CPD for their investigation. The CPD is required to complete its investigation and provide an Investigation Report to the Board within seventy-five (75) days. The Board may then conduct their own review of and hearing regarding a complaint under certain circumstances if the CPD makes a finding of unfounded, exonerated, or not resolved. However, the Board currently may not subpoena witnesses or evidence nor may it take testimony under oath.

The Board may recommend policies or recommend policies or procedures to the City Council or the CPD concerning police practices. If the Board adopts a formal position statement on a policy amendment or recommendation of a proposed amendment to CPD administrative and operational policies, the CPD is required to respond, in writing, to the Board and the City Manager within thirty days. The CPD is required to indicate, in writing, whether it will adopt the recommendation or amendment proposed by the Board or take an alternative action to achieve the same outcome. If the CPD does not adopt the recommendation or amendment proposed by the Board, the CPD is required to provide the Board with a written justification for its decision. The Board may request reconsideration of the CPD's decision by submitting a written request for reconsideration to the Chief of Police and City Manager.

The Charlottesville Board's budget is \$150,000 annually, which includes compensation for its Executive Director.

The strengths of review-focused civilian oversight are:

- Review body and Management work as a team;
- Efficient process since investigations are all done the same way;

- Limited staffing needs because it can use the existing staff network;
- Provides an opportunity for review of certain complaints/incidents and investigations;
- Ensures the community has the ability to provide input into the complaint investigation process;
- Community review of complaint/incident investigations may increase public trust in the process;
- Generally the least expensive form of oversight since it typically relies on the work of volunteers.

The weaknesses of review-focused civilian oversight are:

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

Review-focused civilian oversight of law enforcement may include subpoena power but it is generally seen as unnecessary as they are tasked with reviewing completed investigations rather than conducting their own investigations. Review-focused civilian oversight also does not have any binding disciplinary authority, as their role is generally to offer non-binding recommendations regarding the outcomes of investigations, including any discipline resulting from the investigation.

Cost Estimate: The cost for a review focused civilian oversight board (based on the experience of other jurisdictions) would include the cost of an Executive Director/Auditor (\$150,000 per year), the cost of an additional Assistant City Attorney I in the City Attorney's Office (\$100,000 per year) and an annual budget for other expenses (approximately \$75,000 per year) for a total cost of Model A = \$325,000 per year.

Model B - Investigation-focused civilian oversight

An investigative-focused oversight body operates separately from the local law enforcement agency and conducts independent investigations of allegations of misconduct against law enforcement officers and civilian employees of the law enforcement agency. These oversight bodies may either completely replace the police internal affairs function or they may supplant the work of internal affairs with regard to certain kinds of investigations or investigations of certain areas of complaints, such as abuse of authority and severe misconduct. The investigation-focused oversight body would likely become a separate city agency which obtains all necessary information for a full investigation, formulates findings, and issues binding decisions on discipline.

Council discussed an investigation-focused model where the civilian oversight body and law enforcement agency would run concurrent investigations of the same complaint or incident. However, we do not recommend this model as there would be a significant duplication of efforts, a potentially inefficient use of resources, and the necessity to address, and resolve, investigations with different outcomes. In addition, a concurrent investigative process is strongly not recommended as it could jeopardize the 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.

Investigation-focused civilian oversight is often found in large cities, including:

- Washington, DC

- San Francisco, CA
- Nashville, TN
- Pittsburgh, PA
- New York, NY
- San Diego County, CA

San Francisco's Office of Citizen Complaints (OCC) is one example of an entirely civilian governmental agency that is solely responsible for investigating complaints filed by community members against sworn members of the San Francisco Police Department (SFPD). The OCC is authorized to:

- Receive complaints (has sole jurisdiction over civilian-initiated complaints);
- Classify complaints;
- Investigate complaints using civilian investigators;
- Make findings on complaints investigated by civilian investigators;
- Make policy recommendations.

The OCC has the authority to compel production of police agency records, compel production of records from other city/county/government agencies, compel statements from officers, and subpoena documents, evidence and witnesses. However, the OCC is prohibited from undertaking an investigation until any pending criminal charges against police officers have been adjudicated or unless they receive permission from the district attorney to proceed.

The OCC has a staff of 35 (including a Director, Deputy Director, 3 Senior Investigators, 4 Attorneys, 17 Line Investigators, and 8 clerical staff), with a total budget of \$4.3 million. Note that the City Charter requires one investigator for every 150 sworn officers, a ratio that is often seen in investigation-focused civilian oversight bodies.

The OCC reports to a Police Commission, with volunteer seven members appointed by the Mayor and Board of Supervisors. The Director of the OCC serves at the pleasure of the Police Commission. In addition, the Commission sets policy for SFPD, conducts disciplinary hearings on charges of police misconduct filed by the Chief of Police or Director of the OCC, imposes discipline in such cases as warranted, and hears police officers' appeals from discipline imposed by the Chief of Police.

The strengths of investigation-focused civilian oversight include:

- 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.

The weaknesses of investigation-focused civilian oversight include:

- Most expensive and organizationally complex form of civilian oversight;
- Will require additional staff;
- Subpoena authority used to compel citizens (e.g., complainants or, more likely, witnesses) to testify or

provide documents or other evidence could raise concerns from community;

- Removes disciplinary responsibility and, therefore, control of employees from Chief of Police;
- Has the potential to undermine the responsibility of the Chief of Police to maintain discipline;
- Civilian investigators may face strong resistance from police personnel, create adversarial relationships;
- Sets high expectations for change with the public, may result in disillusionment when expectations are not met quickly.

Investigation-focused civilian oversight bodies often have subpoena authority, which is most often used to compel citizens (e.g., complainants or, more likely, witnesses) to testify or provide documents or other evidence. Investigation-focused civilian oversight bodies also generally have binding disciplinary authority.

Cost Estimate: The cost for an investigation focused civilian oversight board (based on the experience of other jurisdictions) would include the cost of an Executive Director (\$200,000 per year), the cost of two investigators (based on a best practice ratio of one investigator per 150 officers) (\$200,000 per year), the cost of an board appointed attorney (\$150,000 per year) and an annual budget for other expenses (approximately \$175,000 per year). Additionally, an additional Assistant City Attorney I in the City Attorney's Office would still be needed because the impact the board relationship with the City's structure will have will create additional legal work. (\$100,000 per year). Total cost of Model B = \$825,000 per year.

Model C - Hybrid auditing/investigation oversight

In a hybrid model the law enforcement agency would continue to conduct all investigations except those assigned, in code, to the oversight body. The oversight body in this hybrid model could, for example, conduct all investigations related to use of force by a law enforcement officer, death or serious injury to any person held in custody, discriminatory stops, and other incidents categorized as "abuse of authority" or "severe misconduct," as well as civilian complaints regarding any incident of questionable, reported law enforcement conduct.

In addition to the investigation focus, this hybrid body could focus on providing feedback and input not just on individual cases, but also other policing policies, directives, programs, and outcomes as well as data, reports, budgets, expenditures.

Hybrid models of civilian oversight of law enforcement are in place in a number of cities across the country, including:

- Portland, OR
- Albuquerque, NM
- Kansas City, MO
- Atlanta, GA
- Berkeley, CA
- Cambridge, MA

One example of a hybrid auditing/investigative oversight body is the Civilian Police Oversight Agency (CPOA) in Albuquerque, NM. The CPOA is an independent agency of City Government, not part of either the City Administration or City Council and consists of a Police Oversight Board and an Administrative Office led by the CPOA Executive Director.

The CPOA receives, investigates and reviews complaints and commendations submitted by community members for/against the Albuquerque Police Department. The CPOA also reviews Albuquerque Police Department policies, practices, and procedures, making recommendation to the Chief of Police.

The CPOA receives citizen complaints regarding the conduct of Albuquerque Police Department (ABQPD) employees and has exclusive jurisdiction over civilian-initiated complaints. The CPOA Investigates citizen complaints using civilian investigators and makes findings on citizen complaints investigated by their civilian investigators. In addition, the CPOA makes policy recommendations regarding ABQPD policies and procedures and monitors and audits all ABQPD Internal Affairs Investigations. The CPOA can compel production of police agency records, can compel the production of records from other city/county/government agencies, can compel statements from officers and can subpoena evidence, documents and witnesses. However, the CPOA has no authority to impose discipline to officers.

The CPOA also has a mediation program as an alternative means of resolving citizen complaints about police conduct. The CPOA has a mediation program that enables complainants to resolve their issues with the accused officer in a face-to-face dispute resolution process involving trained ABQPD Supervisors who act as mediators. The goal of the program is to bring together the involved parties in an effort to achieve mutual understanding. Mediation is limited to cases determined eligible by the CPOA and must be agreed to by both the complainant and the accused officer. Cases that are successfully mediated are not considered disciplinary proceedings in an officer's record.

The CPOA is staffed by 6 full time employees, including an Executive Director who leads the office and a team of investigators. The budget for the IRO is \$482,555.

The strengths of a hybrid model of oversight include:

- Recognizes different levels of investigative needs;
- Generally less expensive than full investigative bodies, but more expensive than review-focused bodies;
- Still 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;
- Provides the freedom and the responsibility to tailor the various components of the system to the particular needs and characteristics of the community;
- Some researchers call a hybrid model the “Ideal Police Review System.”

The weaknesses of a hybrid model of oversight include:

- More expensive and organizationally complex form of civilian oversight than review;
- Will require additional staff.

Hybrid civilian oversight bodies often have subpoena authority, which is most often used to compel citizens (e.g., complainants or, more likely, witnesses) to testify or provide documents or other evidence. Some hybrid civilian oversight bodies have binding disciplinary authority.

Cost Estimate: The cost of a hybrid model depends largely on how the work is divided. Likely, it would include the cost of an Executive Director/Auditor (\$200,000 per year), potential cost of outside counsel needs for certain investigations (\$75,000 per year), the cost of an additional Assistant City Attorney I in the City Attorney’s Office (\$100,000), as well as the costs of other expenses (\$125,000). Total Cost of Model C =

\$500,000 per year.

Concurrent Investigations: There has been some discussion about the potential to have a board that does investigations but continue to have the same investigations conducted in the police departments. We strongly recommend against this option because having more than one investigation of the same matter at the same time will jeopardize the investigation. It could lead to unclear outcomes if the Board investigation and the police investigation result in different conclusions. Additionally, if the same witnesses are being questioned by two different investigators, there is, for example, potential for the witnesses to say different things if the questions are asked in a different way, which would lead to confusion. Currently if there is an internal administrative investigation and it becomes evident that there should be a criminal investigation, the administrative investigation is put on hold until the criminal investigation is completed in order to avoid these same concerns. Lastly, we are not aware of any other locality that conducts concurrent investigations. Therefore, we recommend only one body being assigned to do the investigations, either wholly by the Board staff (investigative focused civilian oversight model), wholly by the police department (review focused civilian oversight model), or certain investigations done by the Board staff and certain investigations done by the Police Department (hybrid review/investigatory model).

Previous Staff Recommendation - Review Model with an Auditor: The model recommended to Council by staff in September (Attachment 6) was a hybrid model of civilian oversight of law enforcement, with a review/auditing focus for the Board at its outset, including the appointment of an independent police auditor appointed by City Council. 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.

Staff continues to believe this is the best option because it provides community input to the current investigative process and provides City Council an appointee whose job it is to have oversight on the process, not simply review or investigate specific incidents. Staff believed the weakest of models (review only) was not enough but also didn't believe the strongest (investigatory with subpoena power) is necessary, yet. Initiating a hybrid model - a review board with an auditor - will uncover whether the investigatory process needs to be transferred from the APD to a separate entity.

CONCLUSION: In closing, 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. 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 the City should not feel obligated to dutifully replicate any one model or approach; the City has the freedom and the responsibility to tailor the various components of our system to the particular needs and characteristics of our community.

Civilian oversight of law enforcement 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 should be built on the engagement of local stakeholders and robust community input. It is recommended that any preferences, proposals or draft materials go out for significant, robust community engagement and outreach to involve concerned and citizens and stakeholders and include their feedback in Council decisions moving forward in this process.

FISCAL IMPACT: There will be an annual, recurring to-be-determined cost to employ professional staff to support the chosen law enforcement civilian oversight body, as well as costs to establish the body and provide

ongoing support to the body and any staff employed to support the body. See the annual cost estimates provided with each model.

ATTACHMENTS:

1. Alexandria City Council Resolution 2950
2. Community Police Review Board Legislation Passed by the General Assembly: SB 5035 (Hashmi); HB 5055 (Herring)
3. Table: “Civilian Oversight of Policing Options”
4. Table: Additional Data re: Civilian Oversight of Policing Options
5. City of Alexandria Administrative Regulation 6-20 “Discipline of Employees”
6. September 2, 2020 Memorandum “Receipt of the Draft Community Policing Review Board and Independent Policing Auditor Ordinance”

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