



Legislation Text

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City of Alexandria, Virginia

MEMORANDUM

DATE: APRIL 12, 2021

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

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

DOCKET TITLE:

Public Hearing, Second Reading and Final Passage 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). [ROLL-CALL VOTE]

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: That City Council hold the second reading and public hearing on the proposed ordinance establishing an Independent Community Policing Review Board and after the public hearing, adopt the proposed ordinance.

BACKGROUND: On June 9, 2020, City Council unanimously adopted Resolution 2950 (**Attachment 3**), 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 5**) - 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. 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 (3 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>](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>](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. 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 on the [Community Policing Review Board Webpage <https://www.alexandriava.gov/manager/info/default.aspx?id=120523>](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.

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 Independent 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 will be 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 will be 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 undertake 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 could choose to use a regional 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.

For Council and the public's information, a redline showing all of the changes made by Council as part of the March 9 first reading is attached (**Attachment 6**).

On March 9 City Council held the first reading of this ordinance in a Legislative Session meeting, and then on March 17 held a special meeting of Council in regard to the proposed CPRB ordinance. In both meetings Council engaged in substantial discussion about many of the elements of the CPRB structure and processes, and at the March 17th meeting made significant changes to the proposed ordinance. All of Council's agreed upon changes are reflected in the revised proposed ordinance (**Attachment 1**) as well as in the redlined version to the revised ordinance (**Attachment 2**).

The proposed changes make a number of clarifications to the language and result in an ordinance that proposes a Board that will have the responsibility to:

- investigate certain defined incidents and in conjunction with the investigatory power has the ability to make recommendations to the Chief of Police on disciplinary matters and has the ability to subpoena documents and witnesses when necessary;
- review APD investigation on other incidents and make recommendations
- review policies and make recommendations
- keep Personally Identifiable Information confidential and allow criminal investigations to proceed before its administrative investigation to facilitate confidentiality;
- enter into an MOU with the APD in order to facilitate a good working relationship and procedures to implement the requirements of the code;
- enter into MOUs with other agencies to support the Board's investigatory authority if needed;
- issue public report annual to City Council on its progress and after each investigation;
- review or investigate all complaint that occurred within two years before the filing of the complaint.
- work with the newly appointed Independent Policing Auditor to hire investigators and staff the board as necessary.

Lastly, the proposed ordinance would establish a new position of Independent Policy Auditor appointed by City Council who will be responsible for staffing the Board as well as providing an auditing of the APD procedures and processes.

The major changes to the proposed ordinance are:

Sec 2-4-221(c): The Board is authorized to enter into a MOU with any other agency in support of Board investigative authority.

Sec 2-4-221(d): In criminal cases where APD provides documents to the Independent Policing Auditor, that information would be held by the Auditor and not shared with the public or the Board until a determination is made that the criminal investigation is complete or a determination has been made that the investigation will no longer be compromised.

Sec 2-4-221(f): This section on Board reports was rewritten to clarify that the Board shall provide an annual public report from the Board to City Council and post-investigatory reports after each investigation which shall redact Personally Identifiable Information or other information where there is a legal prohibition in state or federal law.

Sec 2-4-222(c)and (d): Clarify Board appointees including requiring that the ex officio member with law enforcement experience be at least 3 years honorably removed from service.

Sec 2-4-227(c): Requires APD to complete its investigations in 60 days, and eliminated the exception to APD not reporting on an investigation to the Board while an employee grievance process undertaken using the City Administrative regulations is pending.

Sec: 2-4-229(a): Changed the retroactive date for filing complaints with the Board from six months to two years.

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: Proposed Ordinance showing first reading changes made by City Council on
March 17, 2021

Attachment 3: Resolution 2950

Attachment 4: Councilman Seifeldein Memo regarding review boards

Attachment 5: SB 5035 (Hashmi) and HB 5055 (Herring)

STAFF:

Sarah Taylor, Legislative Director

Joanna Anderson, City Attorney

Meghan Roberts, Assistant City Attorney

Michael Brown, Chief, Alexandria City Police Department

Debra Collins, Deputy City Manager