

SUBCOMMITTEE REPORT ON THE CONSULTANT PROCESS

WHEREAS, the City Council approved a work plan for the Policing Commission that included the charge to “Recommend to Council desired qualifications and qualities of any potential consultant,” and

WHEREAS, the Policing Commission’s Purpose is defined by the City to “make policy recommendations to the City Council and receive all legally public complaints from the Albany Police Department to determine whether to recommend that such complaints be referred to an outside consultant for investigation consistent with California law,” and

WHEREAS, members of the Commission have examined extensive research on policing commissions that demonstrates the importance of independence and the appearance of independence in public engagement with policing and in assessing complaints and recommending whether or not to pursue investigation, and

WHEREAS, a subcommittee formed by the Policing Commission met with Chief Geissberger to hear his concerns and past practices and learned of the process for handling complaints that would be well served by independent review, namely working with Municipal Resource Group (MRG) consultants to conduct such an investigation and to brief city officials on their findings, and

WHEREAS, the subcommittee then met twice with a consultant for the City in prior investigations, Fred Deltorchio of MRG, both a former town police chief and attorney, to obtain his recommendations and suggestions for devising a process that would be legal, reliable and fair, and create a public perception of fairness, and

WHEREAS, the subcommittee sought meetings with the City Manager/City Attorney and the Peace Officers Association prior to bringing this recommendation,

The Policing Commission recommends the following process for receiving complaints and seeking consultants

- 1) When a Complaint is received by the Police Department, the Department shall within two months brief the Policing Commission in Executive Session about the general nature of the complaint and the initial judgment by the Chief (or designee) about whether to seek an outside investigation. If Commission and Chief agree, the process moves forward according to the Chief’s recommendation. If there is disagreement, the Commission will send its recommendation to Council.

- 2) If an outside consultant is hired, the Commission recommends continuing with MRG and Fred Deltorchio, whenever feasible, given their positive track record with city investigations and deep expertise. If that becomes unworkable, then the Commission will be included in discussions of replacement consultants
- 3) If an outside consultant performs an investigation, the consultant will meet with the Commission in Executive Session to brief them on the findings. Commission will then discuss the findings with the Chief or designee in Executive Session, then vote to support that recommendation or to send the recommendation of both Commission and Chief to City Council for further discussion.
- 4) The Commission will be held to the same requirements of confidentiality concerning material in Executive Session as the Council and any other bodies that move into Executive Session and be subject to the same potential penalties of censure or removal if that confidentiality is violated.

Appendix: The Importance of Independent Engagement with Police Complaints

Independence is a core value in public engagement with policing. The National Association for Civilian Oversight of Law Enforcement names "Independence" as its second pillar in its illustration of what makes for "meaningful" civilian oversight.

(https://www.nacole.org/community_oversight_paves_the_road_to_police_accountability)

The oft-cited scholarly article "Getting It Right: Building Effective Civilian Review Boards to Oversee Police," by Udi Ofer--Director of the ACLU's Justice Decision and a visiting lecturer at Princeton University's School of Public and International Affairs--lists "Independent Investigative Authority" third in its "Key Components of Effective Civilian Review", and states that "A civilian complaint review board will be only as strong as its authority to conduct independent investigations." In defining the stakes of this decision, Ofer writes, "Arguably, a weak civilian review board is worse than no civilian review board because it gives the illusion of independent accountability but actually provides little to no accountability." (1052) (Link: <https://scholarship.shu.edu/shlr/vol46/iss4/2/>)

The U.S. Department of Justice's Office of Community Oriented Policing Services in 2021 report on the "State of the Field of Effective Oversight Practices" listed "Independence" first on its "Thirteen Principles for Effective Oversight." "Independence is widely understood to be imperative to an oversight agency's success and legitimacy....An oversight agency must be able to act impartially, fairly, and in a manner that maintains community and stakeholder trust."

(63-64) And later stating: "The ability to perform essential functions expeditiously and without outside interference is crucial to providing effective oversight.....Any requirement of board or outside approval for essential functions and daily operations may cause delays regarding time-sensitive matters and, therefore, reduce overall public confidence in the oversight agency. Public confidence in the Civilian Investigative Panel (CIP) in Miami was seriously damaged by procedural requirements delegating key decisions to the agency's independent legal counsel, who was appointed by Miami's city attorney." (90)

(Link: <https://cops.usdoj.gov/RIC/Publications/cops-W0952-pub.pdf>)

Independent authority to call for investigations--resting either in the commission or the equivalent of the Council--is common in California cities and towns, including those with City Manager forms of government. For example, Davis, California, includes not only investigative authority but an Auditor's office.

(<https://www.cityofdavis.org/city-hall/commissions-and-committees/police-accountability-commission>)

Additionally, the subcommittee considered the recommendation of the President's Task Force on 21st Century Policing co-chaired by Commissioner Charles Ramsey of the Philadelphia Police Department and Dr. Laurie Robinson, Professor of Criminology at George Mason University. Their report stated a first pillar of "Building Trust & Legitimacy" to be backed by a second pillar of recommendations on "Policy and Oversight," including a specific call to "establish civilian oversight mechanisms with their communities." Recommendation 2.8 stated "Some form of civilian oversight of law enforcement is important to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that body."^[1] This built on a 2001 report of the United States Civil Rights Commission calling on government officials to "encourage the creation and development of all forms of external oversight."^[2] The 2021 report commissioned by the United States Department of Justice Office of Community Oriented Policing Services stated "civilian oversight of law enforcement is a mechanism that builds greater trust between the community and law enforcement by promoting accountability, transparency, and legitimacy" and outlined 13 Principles of Oversight that we have consulted.^[3] When Lieutenant James Dilimone of the Lake County, Florida, Sheriff's Office surveyed Florida departments for the Florida state Department of Law Enforcement, he concluded, "The survey results indicate that agencies that are using the civilian boards are experiencing some positive results both from the agency and the community. The agency heads that are using these boards are showing transparency to the communities that they are serving. The officers have come to accept these boards and it appears that the officers are responding positively to the challenge...Based on my research and survey data I would recommend agencies impanel a citizen review board" to be appointed independently of the department and empowered to investigate complaints.^[4] Research on the effectiveness of different models is limited by the wide range of practices and the difficulty in defining a standard

way of measuring success, and each of the expert groups mentioned above called for improved research while also calling for the community to proceed now in creating boards.

^[1] Full report available at

<https://www.justice.gov/archives/opa/blog/president-s-task-force-21st-century-policing-recommendations-print-action>

^[2] <https://www.usccr.gov/files/pubs/guard/ch4.htm>

^[3] Vitoroulis, Michael, Cameron McElhiney, and Liana Perez. 2021. Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices. Washington, DC: Office of Community Oriented Policing Services. Published 2021;
<https://cops.usdoj.gov/RIC/Publications/cops-w0952-pub.pdf>

^[4] <https://secureflorida.org/FCJEI/Programs/SLP/Documents/Full-Text/Dilimone,-James-paper>