

## **Citizens Review Panel Task Force Executive Summary**

On April 21, 2021, the Virginia Beach City Council approved a resolution establishing the Citizens Review Panel Task Force (Task Force) to study the following issues with respect to the additional duties authorized by the pertinent provisions of the current Code of Virginia regarding oversight bodies:

1. The difference between investigative power and subpoena power, and whether investigatory power can be utilized without subpoena power;
2. The purpose and designation of a budget for the citizens review panel;
3. The impact of a citizens review panel on the Police Department;
4. Identifying the best model that the City of Virginia Beach should adopt; and
5. Other pertinent topics regarding the development of the citizens review panel.

On June 17, 2021, the eleven-member Citizens Review Panel Task Force convened its first meeting to begin the task that the City Council laid before it. Over the course of eleven formal meetings, three working group meetings, several sub-working group meetings, and additional work done by individual members, all of which totaled 795 man-hours, the Task Force conducted community informed development of its answers using an approach to quickly improve its knowledge base on pertinent topics, understand stakeholder impacts, and develop a recommendation with practical utility within the pertinent provisions of the Code of Virginia, as well as the policy and organizational structure of the City of Virginia Beach. The Task Force reviewed relevant literature, interviewed citizen oversight professionals, and received City stakeholder input. Understanding the time constraints, the Task Force rapidly prototyped practical models within the authorities of the applicable provisions of the Code of Virginia. Finally, the Task Force analyzed and compared those models to answer the questions the City Council set before it to make recommendations with corresponding considerations.

It is the **unanimous recommendation** of the Citizens Review Panel Task Force that the City restructure the Independent Review Panel into an Independent Citizen Review Board (Board) with the following authorities from the pertinent provisions of the Code of Virginia in accordance with the procedures set forth in the attached City of Virginia Beach Independent Citizen Review Board Policy and Procedures (see Tab 4 for the policy and the end of this executive summary for a summary of the policy):

1. That a civilian oversight body shall be established and will reflect the demographic diversity of the locality.
2. That such a body may receive, investigate, and issue findings on complaints from civilians regarding the conduct of sworn members of the Virginia Beach Police Department (Department).

3. That such a body shall investigate and issue findings on incidents, including the use of force by a law-enforcement officer, death or serious injury, serious abuse of authority from misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of the sworn members of the Department.
4. That such a body may 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 law-enforcement oversight duties, 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.
5. That such a body may investigate policies, practices, and procedures of the Department and to make recommendations regarding changes to such policies, practices, and procedures. In response to such recommendations, the Department shall create a written record, made available to the public in cases where the Department declines to implement such changes.
6. That such a body may review any investigations conducted internally by law-enforcement agencies serving under the authority of the locality, and issue findings regarding the accuracy, completeness, and impartiality of such investigations.
7. That such a body may request reports of the annual expenditures of the Department and make budgetary recommendations to the locality's governing body.
8. That such a body shall make public reports on its activities, including investigations, hearings, findings, recommendations, determinations, and oversight activities.
9. That such a body may conduct any other duties as reasonably necessary to effectuate its lawful purpose as provided for in the pertinent Code of Virginia provisions to effectively oversee the Department.

**Report Contents:**

The ensuing report comprises the collective materials and works from various sources used to develop the Citizens Review Panel Task Force's final unanimous recommendation to the City Council. It answers the question of investigative and subpoena powers. The report recommends the purpose and designation of a budget for the Board. It communicates analyzed impact to the Department. The report provides recommended policy revisions and updates to the Independent Citizen Review Board, that operationalizes oversight and resolution of citizen complaints. The Task Force also recommends revisions to the Department's mediation policy offering the complainant a compelled employee mediation, based on a yet-to-be-determined stakeholder-established level of misconduct severity, without forfeiting an investigation if dissatisfied. It communicates additional practical and stakeholder considerations for establishing and sustaining the revised and restructured oversight body. The Task Force emphatically encourages all recipients of this report to consume the information within each tab in total for reference to gain a more comprehensive understanding of its work in these matters. The report is broken down as follows:

## Executive Summary

Tab 1: Items Relevant to Investigative and Subpoena Powers

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### **Tab 1: Items Relevant to Investigative and Subpoena Powers**

As a result of the plain meaning interpretation of the statute and the manner in which statutes have been analyzed by the trial and appellate courts of Virginia, all potential civilian oversight bodies that are created by action of the Virginia Beach City Council will necessarily utilize investigative authority regardless of whether individual investigators associated with any such body are used or whether subpoenas are utilized in the investigative process. Black's Law Dictionary defines the word "investigate" as simply to "research." Merriam Webster 3rd International Dictionary defines the word "investigate" in the following way: "to observe or study by close examination and systemic inquiry;" "to conduct an official inquiry or to make a systematic examination." The United States Department of Justice, Office of Justice Programs, along with the National Association for Citizens Oversight of Law Enforcement (NACOLE), identifies four investigative models. These models include review, audit/monitor, independent investigation, and a hybrid including some or all of the attributes of the other models.

According to Black's Law Dictionary, a "subpoena" is the process by which the attendance of a witness is required. It is a writ or order directed to a person, and requiring his attendance at a particular time and place to testify as a witness. Additionally, a "subpoena duces tecum" is a subpoena that orders a person to bring documents court. If so constituted by Virginia Beach City Council, a civilian oversight body "may" apply to the circuit court for a subpoena compelling the attendance of a 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.

By terms of the statute as constructed, "investigative" authority exists independent of the potential authority to issue a subpoena. The pertinent Code of Virginia is vague regarding the mechanism for such application which must follow existing rules applicable to the circuit court's procedural ability to issue or enforce a subpoena. Using the term "may apply," it is presumed that the General Assembly meant that the civilian oversight body, represented by counsel, would apply for a subpoena. This Tab also provides other considerations the Task Force contemplated in its recommendation to grant subpoena authority to the civilian oversight body. The revised Independent Citizen Review Board Policy and Procedures in Tab 4 operationalizes the application process and recommends

levers any established civilian oversight body granted subpoena authority would use before applying for a subpoena.

### **Tab 2: Purpose and Designation of a Budget**

Any budget for a restructured civilian oversight body should consider the following expenditures: Staff, Equipment and Consumables, and Technology. These items would allow this body to conduct the functions of investigation monitoring, data analysis relevant to its duties, and coordinating community outreach.

During its analysis of staff structure to support a restructured civilian oversight body, the Task Force requested positions and numbers similar to the Atlanta Citizens Review Board Executive Director's staff. Information on the cost per position and total are included in this tab. As it relates to the Task Force recommendation, the purpose of the budget is to provide at least one full-time staff member to act as Board Coordinator for all related functions. The tab also identifies staff position descriptions that the City should consider regarding the qualifications of the Board Coordinator. The task force recommends that the City Manager identify already existing staff support that can assist or support the Board Coordinator.

While not analyzed, the City should consider office space, equipment, and consumable support to the Board and Board Coordinator.

Finally, while technological support and community outreach were not fully analyzed, technology should be considered to allow for remote Board Member case access, database and analysis tools, and website enhancements to include complaint review request intake and management. In regards to community outreach, a strategic communications plan should be developed. Additionally, a professional survey should be conducted prior to establishment of the Independent Citizen Review Board and periodically thereafter to baseline and gauge the board's impact on the community and the Department.

### **Tab 3: Impact on the Police Department**

As a result of research and interview, the Task Force determined the following impacts to the Department. City policy dictates that the Department and all of its employees are subject to compelled cooperation and appearance in an investigation. This negates the necessity to apply subpoena authority to those employees. Therefore, due to existing policy, subpoena authority should not generate a negative impact to the Department.

On July 19, 2021, the Task Force further reinforced its understanding of the Department impact through interviews with executive members of Virginia Beach Police employee associations, orders, and organizations. The concerns of the membership of these

organizations fell in the areas of subpoena authority, discipline and disciplinary authority, and board member training. Specifically, they expressed a desire that any subpoena authority is executed under court authorization. They encouraged the establishment of a disciplinary matrix within the Department and that binding disciplinary authority remain within the City executive structure, although they did express that a board could render a non-binding discipline recommendation to the City executive structure. Finally, that board membership should go through specific training relevant to their duties in oversight, as well as items relevant to the policies, practices, and the duties of employees of the Department.

On July 12, 2021, and again on August 23, 2021, the Task Force interviewed Chief Neudigate, Chief of Police, Virginia Beach Police Department, about potential impacts. His response expressed concern about a board making discipline determinations. Chief Neudigate did convey that he would like the partnership of the board in developing a discipline matrix.

#### **Tab 4: Identification of the Best Model**

With the assistance of the City Staff, the Task Force developed an Authorities Matrix to understand where current authorities lie within the City and Commonwealth structure in regards to oversight. The matrix contemplates the provisions of the relevant Code of Virginia and identifies where those authorities lie in whole or in part. The version contained in this report includes the unanimously recommended authorities for the Independent Citizen Review Board. The Task Force encourages the City to leverage this tool to identify areas of conflict and efficiency with any established policy. It is extremely important that clearly defined jurisdictions and authorities are incumbent within the entire oversight system.

The National Association for Civilian Oversight of Law Enforcement (NACOLE) recently published thirteen principles for effective civilian oversight of law enforcement. When analyzing various models within the authorities of the pertinent Code of Virginia, the Task Force considered several of these principles as independent criteria (highlighted within the “Thirteen Principles for Effective Civilian Oversight of Law Enforcement” article) to determine the best model. The criteria included the principles, as described by NACOLE, of independence; clearly defined and adequate jurisdiction and authority; public reporting and transparency; policy patterns in practice analysis; confidentiality, anonymity, and protection from retaliation; and community engagement through outreach and community involvement. From this criteria, the Task Force developed its final unanimous recommendation of the model contained within the revised Independent Citizen Review Board Policy and Procedures. All thirteen principles are provided in this report as considerations when developing the establishing policy and serve as a basis from which to evaluate and improve the sustainment of the Independent Citizen Review Board.

An important aspect recommended by the Task Force is in the area of mediation and the Department’s policy regarding that subject. The Task Force developed recommended Complaint Mediation Process Policy revisions. Understanding that most complaints may be resolved without investigation, it addresses the issue of Department employee

participation and finality for a dissatisfied complainant. In areas involving less-than-serious breaches of misconduct, as established by oversight stakeholders and dictated by the City executive structure, the place of duty for the sworn officer would be the location of the mediation. Additionally, through using this process, the complainant would not be precluded from the option to file a formal Internal Affairs complaint if the mediation does not resolve the dispute. The Task Force sees this avenue as a vital requisite to support any model of oversight for the City of Virginia Beach.

The Task Force-proposed Independent Citizen Review Board Policy and Procedures must be read in its entirety to fully understand the application of the recommended authorities and intent. This policy was harmonized with City Staff within existing structure and policy, and it used the policy and procedures of the current Investigation Review Panel as a framework in developing its recommended Independent Citizen Review Board Policy and Procedures. Although further refinement may be necessary, it provides a robust framework for oversight stakeholders to derive the final policy for the Board.

This **summary** highlights the structure and policy of the Board:

### **Board Designation**

- The body will be named the **Independent Citizen Review Board (Board)**

### **Board Membership**

- The Board will consist of **11 voting members and 2 non-voting members with law enforcement experience**, each appointed by Council.
- Member **terms shall be 3 years**, with initial appointees' terms staggered. Members shall be eligible for **no more than 1 consecutive term**.
- The Board **membership shall reflect the diversity of the City's population**. Demographic factors the Council may wish to consider when making appointments include the individual's race, gender/gender-identity, education and socio-economic status. **At least two members of the Board shall be under 40 years of age**.
- **Designates the creation of a Board Coordinator** from an existing City staff member or hired from a pool of Independent Citizen Review Board-vetted applicants.
- The Board Coordinator, at Board Direction, **may monitor investigations, and will conduct trend analysis, and coordinate community outreach** with applicable City staff.
- A basic, yet **substantive training program shall be completed by all appointees prior to beginning their work**, with annual refresher training also required.

## **Complaint and Serious Breach of Conduct Investigation**

- **Expands from 30 to 90 days** the time within which a citizen may request a review of their complaint investigation.
- **The Board shall have unfettered authority to conduct independent review of the any citizen complaint investigation, internal investigation, or police policy or procedure.** Such review may be prompted by a request from a citizen, the City Manager or Police Chief, or may be **self-initiated by majority vote of the Board.**
- **The Board shall be mandated to conduct a review of the internal investigation into any death or serious injury** of a citizen occurring as a result of police action.
- **Board may direct the Board Coordinator to conduct real time passive monitoring of any ongoing Internal Affairs investigation into a citizen complaint,** obtain updates and report those findings to the Board to the extent that it allows the Board to update the community as to the progress of the investigation.
- **If the Board Coordinator determines an investigation is insufficient before conclusion** because the complainant or witness has refused to be interviewed by Internal Affairs, **the Board Coordinator may conduct an independent interview.** The **Board Coordinator shall coordinate with Internal Affairs,** who may also provide technical advice where appropriate.
- **The Board may self-initiate an independent review of any completed Internal Affairs investigation into any incident that rises to their attention,** except where exempted within the policy
- **Speeds up the process by:**
  - **Shortening the window for the Board to hold a hearing** from 45 to 30 calendar days.
  - **Requiring Police Department written response to Board findings within 15 business days rather than 30.**

## **Subpoena Authority**

- **During any Board review** of a completed Internal Affairs investigation, **the Board Coordinator may request the Board apply to the circuit court for a subpoena.** Such request shall be made only after all good faith attempts to obtain an interview or documentary evidence are exhausted. **To make a request for a subpoena application, the Board Coordinator must demonstrate necessity and obtain a**

**legal review, and the Board must approve the application by an affirmative vote of at least 8 members.**

- **Provisions exist to afford the City Attorney, the Commonwealth’s Attorney and the Internal Affairs Office the opportunity to express any concerns regarding the proposed application for subpoena directly to the Board prior to their vote.**
- **The City Manager shall direct, without the necessity of a subpoena, the appearance and testimony of any City Employee the Board requests.**
- **The Police Department shall provide, without the necessity of a subpoena, the entire Internal Affairs investigative file and all relevant evidence in their possession to the Board for any matter they may be independently reviewing.**

### **Policy and Budget Recommendations**

- **The Board may also make policy or procedure and budgetary recommendations related to their role.**
- **All hearings, reports and recommendations/responses are public and will be posted on the Board website.**

### **Public Reporting and Community Outreach**

- **All hearings of the Board shall be open to the public. Records of such hearings, and any Board recommendations to the Police Department (along the Police Department’s response to such recommendations) shall be public information and posted on the Board’s website.**
- **Quarterly and annual reports** of Board activities will be provided to the City Council.
- **The Board shall provide persistent public outreach, including speaking to affected communities, civic groups, in person and via social media and its website, to publicize and promote the Board’s jurisdiction, authorities, and independent work.**

### **Tab 5: Other Pertinent Topics**

This tab contains a listing of other considerations that the City and establishing oversight stakeholders should take into account as it develops, establishes, and sustains a restructured and revised Independent Citizen Review Board. The listing of enumerated items is by no means exhaustive, nor serves as an impediment to innovation. It is



intended to communicate the items derived from the Task Force's research and deliberations that it felt most important to communicate to readers of this report as relevant oversight stakeholders develop a final policy.

Key among them are:

- A Summary of Code of Virginia statutes strengthening oversight of law enforcement agencies.
- Description of Analysis and Communication Functions of the Board
- Upgrades to case review processes and corresponding technical solutions.
- Improvements to reporting and analysis frequency and communications to the public
- Considerations for advertising expectations and constituting the Board membership:

#### **Appendix:**

The Appendix contains unmodified Public Comments and Survey Results, Meeting Minutes and attachments, Literature Bibliography, and additional primary source documents. This represents the unfiltered information by which the Task Force developed its final recommendation.

#### **Acknowledgements:**

The Task Force would like to thank the City Council for its guidance and trust in such an important topic. The Task Force worked diligently within the time constraints to provide a recommendation and report to answer the vital questions posed. The Task Force quickly became experts in the pertinent Code of Virginia provisions and various aspects of law enforcement oversight and offers to continue to be a resource on this subject for the City.

The Task Force would like to thank City Manager Patrick Duhaney and Police Chief Paul Neudigate for their candor and participation in this process. Their insight was vital in formulating a recommendation that could quickly be adopted by the City.

Finally, the Task Force would like to recognize the tremendous efforts provided by City Clerk Amanda Barnes, Director of Human Resources Regina Hilliard, Deputy City Attorney Roderick Ingram, and Assistant to the City Manager Melissa Zibutis. Their counsel in matter important to the mission of the Task Force were invaluable. The

responsiveness and prescience to the needs of the Task Force were above and beyond expectations. The Task Force would like to commend all of them for their tireless and professional support on this important subject.

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