



CITY COUNCIL
Staff Report

Meeting Date: Oct. 20, 2020

To: Mayor and City Council

From: Scott Chadwick, City Manager

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Subject: Presentation Regarding the Different Options for Civilian Oversight of the Police Department and Recommendation to Hire a Consultant and Seek Community Input on the Best Approach for the City of Carlsbad

Recommended Action

Receive a presentation on the different options for citizen oversight of police departments.
Consider a staff recommendation to:

- Obtain input from the community regarding law enforcement concerns and desired aspects of police oversight.
- Hire an expert consultant to design a police oversight and review program that is tailored to the needs of the City of Carlsbad.

Executive Summary

This presentation comes in response to a minute motion approved by the City Council on Aug. 18, 2020, directing staff to return with a report that provided greater detail on the three models for civilian oversight of police departments and a staff recommendation on the option most suitable for the City of Carlsbad.¹

This report explains four police oversight and review options available to the council and provides a recommendation:

1. An auditor/monitor model
2. A review-focused model
3. An investigation-focused model

¹ Minute motion by Council Member Bhat-Patel, seconded by Council Member Schumacher, approved 3/1, Hall voting No. The minute motion was preceded by staff's report on the Police Department's use of force, the Police Officers Bill of Rights and citizens review committees on police practices and procedures, which included some of the information in this report.

4. Retain an expert consultant to make an independent recommendation about the best way for Carlsbad to address the community's concerns with respect to civilian oversight of law enforcement.

Discussion

Overview

The purpose of civilian oversight of police includes:

- Building trust between the community and its law enforcement agency
- Eliminating bias, ensuring due process of law for all
- Increasing transparency into police operations, particularly relating to allegations of misconduct and internal affairs investigations
- Improving accountability
- Engaging the community on law enforcement issues
- Advising department leaders
- Providing community members with a forum for airing grievances
- Deterring misconduct

Cities, counties and other agencies that provide law enforcement have taken a wide range of approaches to achieving these goals. Some large law enforcement agencies are overseen by independent panels with broad investigatory powers and professional investigators. Some cities have commissions involved in personnel matters. In smaller jurisdictions, police oversight agencies may be primarily advisory panels.

The specific needs and demands of the community drove these choices. Some governments faced significant problems with police misconduct, public trust or both and needed to make major reforms. Others sought to improve police-community relations, or to foster a dialog with the community. While there is limited data on the effectiveness of police oversight agencies, studies have shown that a community that has confidence in its police department tends to be safer and have reduced crime, because more people come forward to report crimes and are willing to testify in criminal cases.

The U.S. Department of Justice provides three basic models of police oversight, again, with many variations and many hybrid models. The following sections will detail the three basic models of police oversight, including the potential benefits and issues to consider, and a recommendation that the Council retain an expert to help the City define its goals and design an oversight or review model specific to Carlsbad.²

² Information on the types of oversight agencies and other information in this presentation comes from the report Civilian Oversight of the Police in Major Cities. Stephens, Darrel W., Ellen Scrivner, and Josie F. Cambareri. Office of Community Oriented Policing Services, U.S. Department of Justice. 2018
<https://cops.usdoj.gov/RIC/Publications/cops-w0861-pub.pdf>

Auditor/monitor model

This model focuses on examining patterns in complaint investigations and discipline as well as policies, practices or training to make broad organization-level recommendations. Some of these bodies have independent experts who actively participate in open internal investigations.

Under this model, the oversight body and its staff may be involved with every part of the police agency's response when a community member complains about an officer. This can be a significant amount of work – classifying the complaint, investigating it, documenting the findings, analyzing the data – often done in duplicate or alongside police internal affairs investigators. However, it can reveal problems that might otherwise be missed.

Potential benefits:

- Along with independent oversight, this model helps spot problems in how complaints are handled, flaws or bias in investigations and gaps in training, policy, supervision and discipline.
- This model can provide a broad range of oversight, from analyzing policy to reexamining individual incidents.
- As with the other models, this model can help build public trust.

Issues to consider:

- This is a complaint-driven model that analyzes data to identify trends, so it can take time for the process to show results. Cities with a low number of complaints do not have much data to analyze.
- Audits may fail to spot systemic but underreported problems affecting population groups less likely to complain because of economic or legal status or other circumstances.³ They also may not track misconduct revealed when cases go to court.
- This does not provide a public forum.

Review-focused model

This model of police oversight generally involves a board of citizen volunteers that reviews already completed internal affairs investigations to determine if they were adequate and states their agreement or disagreement with the findings. It may also request further investigation be conducted and make recommendations to police executives. This model often includes public meetings for community members to comment on police conduct, practices and policies. The focus is on improving community-police relations.

A commission can review and provide recommendations to the city and police department on police related issues such as policies, procedures, practices, community-police relations, use of force, and the priority and importance of services provided by the police department.

³ This information and other material in this presentation comes from the report, "Oversight Models: Is one model better than another?" by the National Association for Civilian Oversight of Law Enforcement. That report notes, "Other groups such as individuals working in sex trades or involved in gangs are not likely to report even the most egregious police misconduct." https://www.nacole.org/oversight_models

Potential benefits:

- Because its meetings are generally in public, this model tends to provide greater transparency than the auditor/monitor model.
- These commissions can provide a forum that fosters greater involvement by the community and serve as an advisory body to police.
- A law enforcement agency may be more inclined to take action when the recommendation comes from an official panel. If the commission also reviews completed internal affairs investigations, this model would provide independent review of internal police investigations.

Issues to consider:

- Panelists need specialized training. Experts recommend this training come from outside the organization.
- All public meeting requirements would apply.
- Confidentiality issues may arise depending on the scope of the commission's work.
- These boards may not be effective without adequate independence.

Unlike the city's other commissions, a police oversight commission looking into complaints against police officers would need to do so behind closed doors due to the confidential nature of police officer personal files (California Penal Code 832.7) Records and findings of the commission would remain confidential and would be protected from disclosure. (*Berkeley Police Assn. v. City of Berkeley* (2008) 167 Cal.App.4th 385, 404-05.)

The authorities that can be given to such a commission would also be limited by the city charter, which operates as Carlsbad's constitution. For example, giving the commission the power to recommend and impose discipline would conflict with the city charter because these actions are administrative actions that are within the city manager's purview under the council-manager form of government established by the city charter. (*Brown v. City of Berkeley* (1976) 57 Cal.App.3d 223, 233; *Hubbard v. City of San Diego* (1976) 55 Cal.App.3d 380, 388.)

Investigation-focused model

This model provides independent investigations of incidents involving police personnel. It requires professional staff and is basically a duplicate internal affairs office of the police department, with highly skilled and trained investigators working within the agencies to investigate complaints. Some may recommend discipline.

This sort of oversight agency is typically found in jurisdictions with large numbers of peace officers, or in cities confronting significant issues of police misconduct or long-standing problems in police-community issues.

Potential benefits:

- Having an empowered independent watchdog office can increase public trust in a community lacking confidence in the police department's ability to investigate itself.
- Using outside investigators avoids the inherent conflicts in many internal affairs units when departments rotate investigators in and out of the units.

Issues to consider:

- While they provide the greatest level of scrutiny and accountability, an investigation-focused oversight agency requires a significant amount of professional staff, which makes this the costliest approach.
- This type of commission will have to navigate legal issues including confidentiality of police officer personnel files and the Peace Officer’s Bill of Rights.

Staff’s recommendation: An expert recommendation and community input

Oversight of police departments and reviewing their policies and procedures is legally and procedurally complex, and politically sensitive, with a national urgency driven by events outside of Carlsbad. Due to the complexity, staff recommends that council retain an expert consultant with experience advising cities on this topic who could help the city define what goal it is trying to achieve in terms of police oversight or reform. The consultant would study the city, receive community input, analyze the options and provide a Carlsbad-specific recommendation for the council’s consideration.

Council may also want to consider:

Establishing a community working group to receive community input about police policies, practices and potential oversight models in Carlsbad.

The idea for a community working group was based on the success of meetings the Police Department has had with the Carlsbad Equality Coalition and the North County Civil Liberties Coalition to discuss police policies and practices. (See e-mail from Keyrollos Ibrahim, Carlsbad Equality Coalition, Exhibit 1) These discussions have built trust and collaboration between the police department and the involved groups.

Local examples

As staff reported to the City Council in its Aug. 18 presentation on this topic, several cities in San Diego County have adopted various models of police oversight panels:

Jurisdiction	Committee or commission	Mission
Chula Vista	Community Advisory Committee	Advises police chief on police-community relations and efforts to deter, prevent crime
Oceanside	Police and Fire Commission	Advises City Council on policy matters relating to police, fire and public safety
National City	Community & Police Relations Commission	Receives and reviews misconduct complaints, can recommend changes in policies and procedures

San Diego	Community Review Board on Police Practices	Reviews and evaluates complaints from public, administration of discipline, officer-involved shootings, in-custody deaths and all police actions that result in death
County of San Diego*	Citizens Law Enforcement Review Board	Conducts independent investigations of citizen complaints of misconduct

* Provides law enforcement for nine cities and county's unincorporated areas.

The City of La Mesa decided last week to create a new police oversight board and retain an independent police auditor to investigate serious incidents and misconduct complaints against the city's officers. La Mesa's new Community Police Oversight Board is to make recommendations about policy decisions and officer discipline and direct the independent auditor to investigate all serious incidents involving police.⁴

Fiscal Analysis

This agenda item is for discussion only, so there are no fiscal impacts at this time.

Next steps

With the council's approval, staff will procure a contract with an expert consultant to help define the goals for the City of Carlsbad in terms of police oversight and review of police policies and determine the best approach to achieve those goals. Staff will also establish a community working group to receive community input about police oversight, policies and procedures in the City of Carlsbad.

Environmental Evaluation (CEQA)

This action does not constitute a "project" within the meaning of the California Environmental Quality Act under Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and therefore does not require environmental review.

Public Notification and Outreach

Public notice of this item was posted in accordance with the Ralph M. Brown Act and it was available for viewing at least 72 hours prior to the scheduled meeting date.

Exhibits

- 1. Sept. 19, 2020. E-mail from Keyrollos Ibrahim, Carlsbad Equality Coalition

⁴ See: In split vote, La Mesa Council approves new police oversight board, sandiegouniontribune.com/news/public-safety/story/2020-10-13/in-split-vote-la-mesa-council-approves-new-police-oversight-board

Sheila Cobian

Subject: FW: Creation of a working group on police reform**From:** keyrollos ibrahim**Sent:** Saturday, September 19, 2020 10:31 AM**To:** Scott Chadwick <Scott.Chadwick@carlsbadca.gov>**Subject:** Creation of a working group on police reform

Good afternoon,

My name is Keyrollos Ibrahim and I am the co-founder of the Carlsbad Equality Coalition. I have spoken at several council meetings regarding our efforts to have an open dialogue regarding policing in Carlsbad. As you may know, the Carlsbad Equality Coalition, the North County Civil Liberties Union, and the North County NAACP have all separately been meeting with the Carlsbad Police Department to review their policies and provide recommendations on substantive changes that we believe will keep the community and its officers safe. The CEC, NCCLC and NAACP all recently met for the first time and have aligned their efforts into one review. All of us feel that our meetings with Assistant Chief of Police Williams have been very productive. We are learning a lot about the department but at the same time have been given the opportunity to provide input in specific areas.

There is a problem however, the public is largely unaware of these efforts. In fact, public perception is to the contrary, many want to return to protesting because they believe that the department has done nothing in the wake of the three day protests to address the public's concerns. I am highly concerned that these productive conversations we are having will turn political and hinder any efforts we make on this very apolitical issue.

I was hoping that we could form a working group or task force that recognizes the meetings already taking place with the department. In my opinion, this group should include the three groups I mentioned, Assistant Chief of Police Williams and members of the Carlsbad Peace Officers Association. It could also include members of the public who are similarly dedicated to the issue but not affiliated with any of these groups so as to keep this process open.

This method would allow all of us to continue to meet in good faith while showing the public the CPD is committed to an open dialogue. It would also quell the fears of some by showing that all factions are fairly represented at the table. Lastly, it would give us an avenue to share with the council our findings at the conclusion of such a review. If a task force could give a report to council in writing or via a presentation it would allow the public to see the results of these efforts and give the council valuable perspective to consider as we move forward.

Thank you in advance for your consideration and I look forward to hearing your thoughts. My number is and I am happy to take a call from you at any time. I truly believe that Carlsbad can be a leader on this issue and that the right players are already in place, we just have to get the politics out of the way!

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In Friendship,
Keyrollos Ibrahim

“How far you go in life depends on your being tender with the young, compassionate with the aged, sympathetic with the striving and tolerant of the weak and strong. Because someday in your life you will have been all of these.”

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