

STAFF REPORT

DATE: July 11, 2017

TO: City Council

FROM: Dirk Brazil, City Manager
Kelly Stachowicz, Assistant City Manager
Darren Pytel, Police Chief

SUBJECT: Police Oversight

Recommendation

Hold discussion to provide direction to staff regarding police oversight for the City of Davis, specifically related to the following:

- Interest in changes to existing oversight structure(s)
- Types of oversight
- Public process and timeline

Fiscal Impact

There is no fiscal impact to this report. If Council provides direction, actions could have fiscal impacts.

Council Goal(s)

This supports the Goal: Ensure a Safe and Healthy Community. This is not tied to a specific task.

Background

Earlier this year the long-time police auditor informed staff that he would not seek a contract renewal for FY 17-18. The police auditor position has been a part of police department oversight for more than a decade. With the auditor's departure, various community members have stepped forward requesting a community dialogue regarding the future of police oversight in Davis. Some are also asking specific questions regarding policing in Davis and have raised the need for stronger oversight in Davis in light of an event occurring on Picnic Day 2017.

In April, Council asked staff to report back regarding oversight models and the replacement of the departing auditor. This staff report is divided into several parts meant to assist the City Council in a discussion about oversight options: oversight systems currently used in Davis; overall strategic planning and community policing in Davis; typical police oversight models; the present situation and questions.

Oversight Systems Used in Davis

Police oversight in Davis is not new. In 2005/2006, following a few specific police interactions in the community, and significant community debate, the City adopted a three-pronged approach to community involvement and oversight of the police and the police department. At that time, the City has had a Personnel Board in place since 1966, created as part of the City's overall

personnel rules and regulations to deal with disciplinary issues. City staff added the following three structures, with associated funding approved by the City Council: Police Ombudsman (Auditor), Police Advisory Committee (PAC), and the Community Advisory Board (CAB). Since 2005/2006, the police department has also implemented an Alternative Conflict Resolution (ACR) Program.

Specifically, these oversight structures include:

Personnel Board

The City has a Council appointed Personnel Board, comprised of Davis citizens, just like the City's other commissions. The function of the Personnel Board is to hear appeals submitted by any city employee involving any disciplinary action, dismissal, demotion, interpretation or alleged violation of the city's personnel rules, and to certify its findings and recommendations as provided in the personnel system rules. The Board, when requested by the City Council or City Manager, shall investigate and make recommendations on any matter of personnel policy. When serving as an appeal body, the Personnel Board has access to all documents relating to the investigation and personnel documents related to training, evaluation and prior discipline, including those investigations that led to discipline.

Police Ombudsman (Auditor).

In 2005/2006, a few, mostly larger, communities employed some type of police ombudsman/ police auditor position, either full time or on contract, to act as a point of contact for any member of the public who had a question about or concern with the police.

The Ombudsman would help to answer questions and guide the individual through any process related to police complaints. Davis built on this approach with a contract ombudsman who was hired and overseen by the City Manager's Office, not the Police Department. The City contracted with Bob Aaronson, an attorney who had been the police auditor for the city of Santa Cruz and worked with law enforcement agencies and police chiefs throughout the state.

Based on his meetings with members of the public and his observations of the Police Department, he made suggestions to the City Manager and the Police Chief/police management related to possible improvements or changes in police policies and procedures, ranging from the citizen complaint process to training opportunities for officers. The position evolved over time to include reviewing all use-of-force investigations and citizen complaint investigations and was eventually renamed the Independent Police Auditor.

Police Advisory Committee (PAC)

The PAC (disbanded in 2010) consisted of three individuals, appointed by the City Manager, who reviewed completed citizen complaint investigations. One member was a former police chief (Calvin Handy) and two members were attorneys (David Sandino and Joe Taylor). The primary role of the PAC was to review and evaluate all completely adjudicated citizen complaints against employees of the Davis Police Department. They

also reviewed and provided recommendations on the policies and procedures of the department, training of police employees or other items related to the Police Department, as requested by the City Manager. Recommendations made by the PAC during their tenure included suggestions for enhanced communication surrounding investigations (informing the complainant of the timelines and processes and clarifying outcomes to be included in the final letter sent to complainants).

Community Advisory Board (CAB)

The CAB was re-formed in the fall of 2005 to provide the Police Chief with face-to-face dialogue with community representatives. Initially 12 members of the community were selected. Over the first 12 months of operation, additional members were added to increase and diversify the representation.

The members represent a cross-section of the community based on race, religion, gender, representation (e.g., business community, UCD students) and other factors. The members are selected by the Police Chief with the City Manager's approval and serve at the will of the Chief and the City Manager.

The group developed their own mission statement: "Using two way communications, improve relationships between the public and the police. To actively represent the community by articulating, advising and tracking community and police issues."

The group is meant to provide the Police Chief and other Police Department staff a window into the community. It allows Police Department staff to understand important community issues as seen through the eyes of the community. Members of the group bring to the meetings their concerns, questions, comments and suggestions about police related issues. On more than one occasion members have brought controversial issues to a meeting to get clarification on police policies or specific cases. While the Police Department has to be diligent in its protections of confidentiality, misinformation in the community has been addressed and the CAB members have been able to share the correct information with people in the community.

Alternative Conflict Resolution Program (ACR)

In January 2015 the police department and community members created the ACR Program. The Program is an informal, confidential mediation process based on two restorative practices: circle processes and non-violent communication. Through the ACR Program, community members with a specific complaint about an interaction with Davis Police employees, are invited to meet face-to-face with that/those Davis Police employee(s) with the assistance of a team of two trained Circle Co-Keepers, who are also members of the Davis community.

The ACR Program allows the participants to safely explore, understand, and/or mutually resolve issues, with the objective of healing the conflict. This may result in agreement, or simply an agreement to disagree. Participants are not required to reach a formal resolution. The expectation however is that by "coming together in a good way," the relationship between the participants will be restored.

Strategic Planning and Community Policing in Davis

In addition to those structures, the Davis Police Department adopted a strategic plan on April 1, 2017 that is focused on oversight, transparency, accountability, diversity and reducing conflict. Additionally, the department published a new vision statement, which provides clear direction on the type of community policing which the department will engage;

Davis Police Department will model and pursue excellence by partnering with our community; investing in our employees to maintain the highest level of professionalism; being a leader in procedural justice, enacting restorative practices, and embracing our role as guardians of the community.

Specific strategies and tasks related to oversight, transparency, accountability, diversity and reducing conflict include:

- Implement and train department members in the concepts and procedures of “Procedural Justice¹ .” (Summer 2017)
- Implement and train department members on the “Guardian Mindset² ” and ensure it used in our interactions. (Fall 2017)
- Appoint a committee consisting of Department and community members tasked with reporting to the Police Chief on implementing recommendations from President Obama’s Task Force on 21st Century Policing³. (Summer 2017)
- Beginning January 1, 2018, collect required data in the Racial and Identity Profiling Act of 2015. Beginning January 2019, annually post data from the previous year on the Department website⁴.

¹ Procedural justice concerns the fairness and transparency of the processes by which decisions are made, and may be contrasted with distributive justice (fairness in the distribution of rights or resources), and retributive justice (fairness in the punishment of wrongs). Hearing all parties before a decision is made is a significant step towards creating a procedurally fair process. Departmental evaluations will be adjusted to reflect the importance of procedural justice and annual surveys and complaint analysis will be used to determine any movement regarding the public perceptions of the Davis Police.

² The Guardian Mindset prioritizes service over crime fighting and values the dynamics of short term encounters as a way to create long term relationships. It instructs officers that their interactions with community members must be more than legally justified; they must also be fair, respectful, and considerate. It emphasizes communication over command; cooperation over compliance; and legitimacy over authority. Departmental evaluations will be adjusted to reflect importance of the “Guardian Mindset” and annual surveys and complaint analysis will be used to determine any movement regarding the public perceptions of the Davis Police.

³ https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf . The President’s final report contains several dozen recommendations for implementation. Not all recommendations are pertinent to Davis or California law enforcement and some recommendations will require funding to implement. The Task Force will make recommendations to the Police Chief regarding implementation priorities and methods.

Specific Recommendation: Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.

⁴ Davis is not statutorily required to submit data until 2023

- Beginning January 2018, annually post summary use-of-force and citizen complaint data from the previous year on the Department website.
- Conduct biannual “Know Your Rights” presentations to discuss current laws and Davis Police Department policies and procedures.
- Conduct an annual community survey regarding the Police Department and our service to the public. Post summary response information on the Department website.
- Conduct quarterly random individual satisfaction surveys to 50 people who have been cited or who have made a crime report to the Police Department. Annually, post summary response information on the Department website.
- At least monthly, ensure the Police Department webpage is updated– making sure that it is user friendly, accessible, has up-to-date information, and provides links to safety information and services provided by the Police Department.
- Work with Davis Phoenix Coalition, Human Relations Commission, Davis Joint Unified School District (DJUSD) and faith community to host jointly sponsored quarterly BBQ’s/Picnics involving traditionally under-represented community members as suggested by co-sponsors.
- When appropriate, and at least once annually, allow community members to watch and/or participate in certain police officer trainings (use of force/de-escalation scenarios).
- As needed or recommended by the Davis Phoenix Coalition and/or the Davis Human Relations Commission, hold community forums following significant national, state, or regional level events or actions involving law enforcement to discuss local implications with the intent to address and potentially alleviate/ameliorate community concerns generated from such incidents.
- Hold monthly informal coffee or “soda with a cop” conversations in different parts of the community to discuss issues of community/neighborhood crime and public safety concerns.
- Create a recruiting video that tells the story of the Police Department, what we are looking for in police applicants and expectation of current and future Davis Police Officers.
- Build relationships with cultural groups and organizations that work with diverse communities in order to seek assistance to recruit and hire a diverse workforce.
- Have department members (sworn, dispatch and others depending on assignment) attend advanced Crisis Intervention Training (CIT) to ensure members are trained in the latest techniques for crisis response. Sworn-staff will receive biennial training unless sooner needed.

- Work with mental health organizations and community experts to create a Davis Police Department Crisis Intervention Team using national models for guidance.
- Work with the Yolo County District Attorney on expanding restorative practices and diversion programs (mental health court, Proposition 47 diversion) and expand the types of cases handled through Neighborhood Court.
- Evaluate Davis Police Department Juvenile Restorative Justice Program and look for ways to improve and possibly expand services.
- Following best practices improve and maintain scenario based use-of-force training for sworn personnel.
- Replace the non-operational crisis intervention/ force options simulator with a new simulator.
- Continue emphasis on de-escalation strategies and interpersonal communication skills (“Tactical Communications” or “TacCom”) for sworn staff as an alternative to using force.
- Develop strategies to reduce the specter of biased policing (e.g., develop methodologies to involve front-line personnel in casual, non-enforcement interactions with diverse components of the community; work with expert(s) in the field of unconscious bias (consultant/facilitator) to create and conduct a refined and innovative unconscious bias training curriculum for Police Department personnel, etc.) Require all personnel to participate in formal unconscious bias training within six months of being hired.

Typical Police Oversight Models

The following are typical police oversight models used in cities around the United States⁵. Davis is able to implement any system, or combination of systems, as long the City does not violate state and federal law (Attachment A) or the City of Davis Personnel Rules and Regulations.

- Investigatory Systems - These oversight systems conduct investigations; they do not rely on investigators or investigations from within the police department.
- Review Systems - These systems involve an individual or a board/commission that is authorized to review completed internal affairs investigations; they can often issue agreement or disagreement with internal affairs findings; and they are usually allowed to review only cases that are investigated by the police.

⁵ National Association for Civilian Oversight of Law Enforcement. (2016). *Guidebook for the Implementation of New or Revitalized Police Oversight*.
https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/175/attachments/original/1490637881/Guidebook_for_the_Implementation_of_New_or_Revitalized_Police_Oversight_2016.pdf?1490637881

- Monitoring/Auditing Systems - Most commonly referred to as “auditors,” “monitors,” or “ombudsmen” these systems tend to have an ongoing monitoring or auditing authority over the police department.

The oversight agency may actively engage in many or all of the steps of an established complaint process. The range of authority under monitoring/auditing systems may include:

- Receiving and classifying complaints
 - Providing input on the investigative process including planning, interviewing, and evidence collecting
 - Conducting systemic investigations
 - Assessing compliance with police department policies and relevant state and federal law,
 - Evaluating the integrity and effectiveness of the police agency’s accountability Systems, and
 - Crafting analytical and/or empirical reports and audits
- Policy and Process Advisory Systems - Policy and process advisory systems are those that help to shape or manage policy, advise the head of the law enforcement agency, or participate in the law enforcement executive or line-officer hiring processes.

The range of authority under policy and process advisory systems may include:

- Consulting with decision makers inside the police department,
- Evaluating the police department’s needs and conducting best practices research, and
- Drafting legislation and position papers

Civilian oversight of police is not a one-size-fits-all proposition. Many communities create hybrid systems (Davis currently has a hybrid model). If hybrid models are used, all of the systems should be complementary rather than redundant. Importantly, every system has its strengths and weaknesses which should be thoroughly vetted before implementation. Additionally, to the extent that any oversight system changes a present working condition, the system would be subject to meet-and-confer requirements with the Davis Police Officers Association and the Individual Police Managers Bargaining Group.

For a thorough review of oversight models, Council and community members are encouraged to read the *Guidebook for the Implementation of New or Revitalized Police Oversight*.

Present Situation and Questions

Presently, after 11 years, Mr. Aaronson’s contract concluded June 30, 2017, and the City is in the process of seeking another Auditor. The contract for the position is included in the FY 2017-18 budget. The contract has ranged from \$50,000 to \$65,000 per year for 19 to 28 hours of service a month in the past and it is estimated a future contract would be consistent with this range.

The PAC was disbanded in 2010 due to budget cuts and its responsibility to review completed investigations transferred to the Police Ombudsman/Auditor. Its cost at the time was approximately \$12,000 per year.

The CAB, Personnel Board and ACR Program are still in place.

Staff believes that with the departure of the police auditor and the disbanding of the PAC, the City has an opportunity to re-examine and determine the future of police oversight in the City of Davis.

President Obama's Task Force on 21st Century Policing specifically addresses community oversight and provides helpful direction to define needs, form and structure -

Recommendation: Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.

The public process through which the Davis community, with involvement of City and police department staff, defines what police oversight model is most appropriate is the key to a successful outcome. And while this will certainly result in a longer time frame for implementation, it is staff's opinion that a methodical, transparent and thorough process needs to be accommodated. To date there have been neither general community conversations nor firm Council direction regarding the continuing or replacement of the current police oversight systems in Davis.

With that in mind, staff is requesting specific direction regarding;

- The type of oversight system(s) Council wants to continue or adopt.
 - Whether Council desires additional research or fact finding to continue or adopt a model.
 - Whether Council wishes to engage with a consultant or other outside expertise regarding oversight.
 - If changes are desired, the process for making changes or adopting a new system or model.
- The issuance of a Request for Proposal (RFP) and expected timeline for contracting with a new police auditor, including any proposed contract provisions Council desires.
 - The extent, if any, a new auditor will have on suggesting or participating in a process to implement additional forms of oversight that are complementary to the auditor process.
- Any other Council Request regarding oversight.

Attachments

- A. Peace Officer Personnel Records

DAVIS POLICE DEPARTMENT

PEACE OFFICER PERSONNEL RECORDS & RELATED FILES

Policy and Procedure 1.03-C

DEPARTMENT MANUAL

Index as:

Personnel Records

Peace Officer Personnel Records

I. POLICY

This policy governs the maintenance, retention and access to Peace Officer Personnel files in accordance with established law. It is the policy of this Department to maintain the confidentiality of Peace Officer Personnel records pursuant to California Penal Code 832.7.

II. PERSONNEL FILES & RECORDS

A. Pursuant to Penal Code 832.8, Peace Officer Personnel Records shall include any file maintained under an individual officer's name relating to:

1. Personal data, including marital status, family members, educational and employment history, or similar information;
2. Medical history;
3. Election of employee benefits;
4. Employee advancement, appraisal, or discipline;
5. Complaints, or investigations of complaints, concerning an event or transaction in which the officer participated, or which the officer perceived, and pertaining to the manner in which the officer performed official duties, or;
6. Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

B. Employee records will generally be maintained in any of the following:

1. Personnel File - that file which is maintained in the office of the Police Chief as a record of a sworn officer's employment with this Department.
2. Training File - any file which documents the training records of an employee and is located in a personnel file, performance file, file maintained by the Field Training Administrator, file maintained by a department training coordinator, or file maintained by Professional Standards.
3. Performance File - any file which is separately maintained internally by an employee's supervisor(s) within an assigned division or unit for the purpose of completing timely performance evaluations.
4. Internal Affairs Files - those files which contain complaints or allegations of employee misconduct and all materials relating to the investigation into such allegations, regardless of

disposition and those files relating to the use of force, the involvement of personnel in traffic collisions, or the involvement of personnel in pursuits, regardless of the disposition.

C. Format of Files

1. Files and records may be stored in hard copy format in file and/or in a computer data base under employee name or other "key name" (e.g., Employee #) to be used for retrieval of file or record.

III. INFORMATION IN FILES

A. The Personnel File should contain, but is not limited to, the following:

1. Performance evaluation reports regularly completed by appropriate supervisor(s) and signed by the affected employee shall be permanently maintained.
2. Permanent records of training (original or photocopies of available certificates, transcripts, diplomas and other documentation) and education.
 - a. It shall be the responsibility of the involved employee to provide the Police Chief's Executive Assistant with evidence of completed training/education in a timely manner.
 - b. The Police Chief's Executive Assistant shall ensure that copies of such training records are forwarded to Human Resources for filing.
3. Internal action
 - a. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained in the individual employee's file for at least two (2) years. (Government Code 34090)
 - b. Disciplinary action resulting from a sustained citizen's complaint shall be maintained in the individual employee's file for at least five (5) years. (Penal Code 832.5)
 - c. Investigations of complaints which result in a finding of other than "sustained", shall not be placed in the employee's file, but will be separately maintained for the appropriate retention period in the Police Department Internal Affairs File.
 - d. Once an employee has had an opportunity to read and initial any adverse comment prior to entry into the file, the employee shall be given the opportunity to respond in writing to such adverse comment within thirty (30) days. (Government Code 3306) Any such employee response shall be attached to and retained with the original adverse comment. If an employee refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment. Such a refusal, however, shall not be deemed insubordination nor shall it prohibit the entry of the adverse comment into the employee's file.
4. Commendations shall be retained in the employee's performance file or their personnel file with a copy provided to the involved employee(s).
5. Personnel Reports reflecting assignments, promotions and other changes in the employee's employment status.

B. Training Files should contain, but are not limited to, the following:

1. Field training records.
 2. Firearms qualifications and defensive tactics records.
 3. Other training records of POST or department approved training.
- C. Performance File may contain, but is not limited to, the following:
- Records or documents which may assist a supervisor in preparing an employee's performance evaluation. The performance file should be purged each year when the annual employee's performance evaluation is completed.
- D. Citizen Complaint/Internal Affairs Files
1. Investigations of sworn officers shall be in compliance with section 3300 et seq. of the Government Code, commonly known as the Peace Officer's Bill of Rights. Files shall be maintained under the control of the Police Chief. Access to these files may only be approved by the Police Chief, a Deputy Chief or Professional Standards. These files shall contain the complete investigations of all formal complaints of employee misconduct, regardless of disposition.
 - a. The Police Auditor shall have access to files.
 2. Each investigation file shall be sequentially numbered within a calendar year (e.g. 001-05, 002-05, etc.) with hard copy file database.
 3. Investigations that result in other than a "sustained" finding shall be maintained for at least the minimum statutory period, but may not be used by the Department to adversely affect an employee's career. (832.5(c) PC)

IV. DISCLOSURE & ACCESS TO RECORDS

- A. Pursuant to Penal Code 832.7, all of the above-defined personnel records shall be deemed confidential and shall not be subject to disclosure except pursuant to the discovery procedures set forth in Evidence Code 1043, et seq. or in accordance with applicable federal discovery laws.
- B. All requests for the disclosure of any information contained in any Peace Officer Personnel Record shall be promptly brought to the attention of Professional Standards.
 1. Upon receipt of any such request, Professional Standards shall notify the affected employee(s) as soon as practicable that such a request has been made. (Evidence Code 1043(a))
 2. The responsible administrator shall further ensure that the request is forwarded to the City Attorney who will formally respond to any motion to obtain confidential records.
- C. Except as provided by this policy or pursuant to lawful process, no information contained in any confidential Peace Officer Personnel File shall be disclosed to any unauthorized person(s) without the expressed prior consent of the involved officer or written authorization of the Police Chief or his/her designee.
 1. Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any member of this Department may be guilty of a misdemeanor Penal Code 146(e).

2. Pursuant to Penal Code 832.7(e), the disposition of any citizen's complaint shall be released to the complaining party within thirty (30) days of the final disposition. This release shall be limited to the disposition and shall not include what discipline, if any, was imposed.
 3. The Police Auditor may access any Personnel File.
 4. The Personnel Board of the City of Davis shall have access to personnel files as determined by the City Attorney.
- D. Any employee may request access to his/her own personnel file(s) during the normal business hours of the individual(s) responsible for maintaining such file(s). Employees may be restricted from accessing any such files under the following conditions:
1. Background and pre-employment information, letters of recommendation, test results and promotional assessments.
 2. Ongoing internal investigations pending final disposition or notice to the employee of intent to discipline.
 3. Internal Affairs files which have not been sustained against the employee.

V. PURGING OF RECORDS & FILES

A. Destruction of Records

1. Records and files may be destroyed pursuant to current law upon Resolution of the City Council and with permission of the Police Chief and City Attorney.

Darren Pytel
Police Chief