

STAFF REPORT

DATE: July 31, 2018

TO: City Council

FROM: Mike Webb, City Manager
Kelly Stachowicz, Assistant City Manager
Carrie Dyer, Administrative Analyst

SUBJECT: Hiring of Independent Police Auditor and Creation of a Davis Police Accountability Commission

Recommendation

1. Approve resolution and scope of work authorizing the city manager to initiate a search for an independent police auditor. (Attachment 1 and 2)
2. Approve authorizing resolution for the creation of a Davis Police Accountability Commission. (Attachment 3)

Fiscal Impact

An Independent Police Auditor has direct cost implications. The current budget includes \$60,000 for a contract auditor position, which equates roughly to 22-25 hours per month. This cost could vary based on the conditions set and qualifications required for the actual auditor position/contract. Increasing the position to 30 hours a month, for example, at an average of \$225/hour will cost approximately \$81,000 annually.

Costs for city boards/groups are generally incorporated into existing budgets, with primary costs being staff time to coordinate agenda items and provide administrative support for the group. Staff effort to get the commission up and running may result in a delay of other projects.

Citizen participants/members are historically unpaid resident volunteers. There has been an expressed desire to look into providing stipends to the commissioners if requested. Stipend costs vary depending on the amount determined or if they are a reimbursement for transportation or child care. The City is currently researching a stipend policy that will be coming before Council at a later date.

Council Goal(s)

This work falls under the goal of “Ensure a Safe and Healthy Community” but is not a specific task.

Background and Analysis

On July 11, 2017, following a discussion on police oversight, the City Council directed staff to hire a short-term consultant to complete the following:

1. Review current system, historical documents and recommendations from the Human

Relations Commission.

2. Participate in up to five public or sponsored forums (sponsored forums could be for vulnerable groups who may not be willing to come to public forums) as content expert. Forums should be used to solicit community input on the goals of oversight, guiding principles, and key desired processes for oversight.
3. Recommend 1-3 options that would seem to fit in Davis given size, history of policing and community needs.
4. Include model contract and scope of work for ombudsman/auditor and details of the role of any other entities and how they might change from what is currently in place.

On November 7, 2017, the City Council authorized the City Manager to execute a contract for \$44,000 plus expenses with Barbara Attard of Accountability Associates and Kathryn Olson of Change Integration Consulting, LLC to complete a police oversight review process. Ms. Attard and Ms. Olson were selected based on their relevant police oversight experience in other communities, both in California and in other states.

After extensive outreach in the community and drawing on their research, past experience and expertise, the consultant team presented their findings and recommendation report to City Council on April 10th and recommended a two-prong approach. (For the full report and other related information, please see <https://cityofdavis.org/city-hall/city-manager-s-office/police-oversight/documents>)

1. A revised/enhanced independent police auditor as the first facet of an oversight system.
2. The establishment of a Davis Police Accountability Board as a citizen group to work with the Police Auditor and provide input on police accountability issues throughout the community.

At that time, the City Council appointed a subcommittee of Mayor Davis and Councilmember Frerichs to further research the recommendations of the consultants and return to the City Council with a proposed plan for moving forward with a police oversight model.

In addition to the recommendation of the consultants, the subcommittee reviewed information from NACOLE (National Association for Civilian Oversight of Law Enforcement) as well as other jurisdictions and expanded upon the original recommendation report to prepare a proposed Police Oversight System for Davis.

On June 12, 2018 Mayor Davis and Councilmember Frerichs proposed a dual oversight structure, including a revised and enhanced Independent Police Auditor position and the creation of a Davis Police Accountability Commission. For report and related information, please see <https://cityofdavis.org/city-hall/city-manager-s-office/police-oversight/documents>)

By vote of 4-0-1, the Council directed staff to return to the Council with a resolution to include the specifics necessary to create the DPAC and an updated scope for the IPA. The motion also included the following requests:

- DPAC membership include nine members.
- Additional language on the selection of members to ensure diversity.

- Two members who have experienced interactions or issues with the Davis Police Department.
- Examination of stipend for commissioners.
- Supplemental training budget.
- Additional funding for auditor.
- The potential for City Council to be voting members of DPAC.

Independent Police Auditor. The Independent Police Auditor scope has been updated and expanded from the previous scope, created in 2016. Recruitment for the IPA will be done through the National Association for Civilian Oversight of Law Enforcement (NACOLE). Sixty thousand dollars has been budgeted for the IPA for 18-19, but if additional funding is needed, staff will return to Council once IPA proposals have been received.

Commission Membership. The authorizing Resolution includes a total voting membership of 9, rather than the standard 7.

Commission Membership Requirements. The Council requested language to ensure that members are diverse and that at least two members have had interactions with the Police Department. The proposed language is broad, to allow the Council to appoint the strongest combination of commissioners possible to achieve the goals of the commission. These criteria will be most important in the advertising and outreach for commission members. The language reads as follows: Additional diversity language: Appointment of commissioners shall reflect a diverse representation of the community and include members of various ethnicities, racial backgrounds, sexual orientations, economic status, etc. Additionally a minimum of two members appointed by council shall have demonstrated previous interactions with the Davis Police Department.

Commission Term Limits. The subcommittee proposed two-year terms, for a total of up to three terms (6 years). Staff is proposing that the commissioners on the DPAC have four year terms, rather than two, as is standard across other commissions. A longer term allows for consistency among commissioners, training and time to become effective as a group. With this said, initially half of the members should be appointed for two year terms and half for four year terms, to allow for staggering. If *all* initial members are appointed for four-year terms (or two), they will term out at the same time.

Commissioner Stipend. Council requested staff to look into the possibility of providing stipends for commissioners. Staff has been looking into the options and will return to the Council at a subsequent meeting with a report specifically on stipends citywide. However, at the Human Relations Commission meeting of June 28, 2018 the commission received an update on the police oversight process and by unanimous vote made the following recommendation:

- To create a confidential process for commissioners to receive reimbursement for things such as childcare and transportation, rather than a stipend.
- The reimbursement process should be applicable for all commissions.
- For the purpose of inclusion and diversity, expand recruitment outreach for DPAC members by way of social media, posting flyers, etc. with the help of the Human Relations Commission.

Staff notes that confidentiality is not an option based on state law. Reimbursements from council members and commissioners must be announced publicly. Staff is also trying to weigh the administrative ability to manage reimbursements versus flat payments to all commissioners, with reimbursements posing a number of logistical problems. Staff would like to reach out to existing commissioners and new commission applicants to ask for their input related to their costs to attend commission meetings, as well as their thoughts on stipends. In addition, staff is exploring ways that outreach and recruitment efforts for commissions can be enhanced to seek a broader variety of commission applicants.

If, however, the Council prefers to try a time-limited pilot now rather than wait for a citywide, all-commission policy, specifically to assist with recruitment for this new commission, then staff would initially recommend a flat rate stipend of \$40 each month. Members would be required to be present at the meeting in order to be eligible for the stipend. This stipend would be provided regardless of income levels or need, which minimizes the necessity to provide private, sensitive information to the City. The cost to do this would not exceed \$4,800 for the year.

Supplemental Training Budget. Costs for training will become more apparent once the commission starts, however, staff recommends an initial starting budget of \$10,000, which is equal to \$1,000 per commissioner (including the alternate commissioner). This funding would be housed in the City Manager's Office budget and would come from the General Fund. It is intended to be pooled funding for overall training for the commission.

Council Participation on the Commission. The Council requested that staff and the City Attorney look into the possibility of Council members serving as voting members of the commission. Based on the scope of the commission, it does not appear there is a legal conflict with one or two councilmembers sitting on the commission as full members.

However, staff would encourage the Council to think carefully about this option for several reasons. First, commissions and other groups tend to change their dynamics when a councilmember is speaking, often deferring to that person. This commission, perhaps even more than others, will need to be cognizant of and sensitive to traditional power structures. Within the City organization, the Council sits at the top of that power structure and the active participation of individual council members may discourage some individuals from speaking freely. Second, a voting councilmember on a commission essentially gets "two bites at the apple" – once when an item is discussed at the commission level and once if it is discussed at the Council level. While not illegal, all councilmembers should be aware of and supportive of this if Council chooses to have voting members on the commission. Third, assigning two councilmembers in voting seats means fewer seats for the general public. This commission is increased to 9 members, which is larger than a standard commission, but there is also a seat reserved for ASUCD and seats intended for those with special qualifications, as outlined earlier.

Attachments

1. Resolution Approving Scope of Service for Independent Police Auditor
2. Scope of Work for Independent Police Auditor
3. Authorizing Resolution for Davis Police Accountability Commission

RESOLUTION NO. 18-XXX, SERIES 2018

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
APPROVING A SCOPE OF SERVICES FOR AN INDEPENDENT POLICE
AUDITOR AND AUTHORIZING THE CITY MANAGER TO INITIATE A
SEARCH FOR AN INDEPENDENT POLICE AUDITOR**

WHEREAS, the City Council has as one of its primary goals the provision of top quality police protection and law enforcement services for all residents of and visitors to the community; and

WHEREAS, the City Council expressed an interest in creating a position to coordinate and provide for oversight of police investigations and actions; and

WHEREAS, the City Council has determined that the best model for Davis is a hybrid to include an Independent Police Auditor and a Davis Police Accountability Commission; and

WHEREAS, a qualified, independent Police Auditor is estimated to cost between \$60,000 and \$80,000 per year for services.

NOW, THEREFORE, BE IT RESOLVED that the City Council:

1. Adopt the Independent Police Auditor model of police oversight to ensure that police interactions, policies and departmental processes are fair and thorough. The attached Scope of Service outlines the Police Auditor job responsibilities; and
2. Authorizes the City Manager to initiate a search for a qualified, independent police auditor, based on the approved Scope of Service; and

PASSED AND ADOPTED by the City Council of the City of Davis this 31st day of July 2018 by the following votes:

AYES:

NOES:

ABSENT:

Brett Lee
Mayor

ATTEST:

Zoe Mirabile, CMC
City Clerk

SCOPE OF WORK FOR INDEPENDENT POLICE AUDITOR (IPA)

The following scope of work is intended to cover the range of tasks the Independent Police Auditor may encounter or address over the course of the contract, with the understanding that the amount of time spent on any one task may vary over time.

The IPA is a contract position with 25-30 hours of work each month. The IPA is required to be onsite at least two days a month and attend all meetings of the Davis Police Accountability Commission (DPAC).

Specifically, the IPA will carry out the following tasks:

1. Review Davis Police Department (DPD) Misconduct Complaints

- Receive notice of all complaints, classification and assigned investigator.
- Receive complaints directly and refer them to the police department for investigation.
- Receive real time updates on investigations for monitoring and to coordinate interviews, if needed.
- At the discretion of the IPA, attend interviews of complainants, public witnesses, and sworn officers, asking questions directly (civilians) or through the lead investigator (police personnel).
- Have full access to completed complaint investigation files; all evidence related to the issue, reports (as allowed by state law), analysis, proposed findings, and any proposed discipline.
- Provide evaluations as to whether an investigation is complete, thorough, and objective; an explanation if more investigation or a change in finding is recommended;
- Document any recommendations on policy, procedures, or training growing out of a complaint investigation.
- If an external investigator is used, provide input into the scope of work of the investigator, and offer assistance in the selection of the investigator.
- Work with the DPD and DPAC to promote Alternative Conflict Resolution ACR /mediation as a complaint resolution option.

2. Audit Davis Police Department Misconduct Complaint and Discipline Process

- The IPA will have access to the DPD complaint database and regularly assess issues such as the nature of complaints, how complaints are classified, and whether investigation timelines are met.
- The IPA will have access to DPD personnel and discipline records and will assess the discipline system for fairness and appropriate levels of discipline.

3. Receive Notice of Death, Serious Injury, or Other Critical Incidents

- The IPA will receive timely notification of critical incidents with authority to respond to the scene, if needed. Critical incidents include:

- Officer-involved shootings, regardless of whether a person was hit by gunfire;
- A traffic collision involving police officers that result in death or serious bodily injury to another person;
- A use of force resulting in death or serious bodily injury to another person; or
- All deaths while an arrestee/detainee is in the custodial care of the Department unless there is no preliminary evidence of any of the following: misconduct, a use of force, or an act committed by an arrestee/detainee that appears intended to cause injury or death.

4. Audit Davis Police Department Policies, Procedures, and Training

- Collaborating with the DPAC, the IPA should prioritize and audit DPD policies, procedures, or training related to these topics or other matters that may be identified and take precedence for auditing purposes. The following is not an exhaustive list of issues but indicative of what can be done.
 - Progress on meeting DPD Strategic Plan goals - in particular, goals with regards to training on procedural justice, the Guardian mindset, implicit/unconscious bias, and de-escalation
 - Progress on DPD compliance with CA Racial and Identity Profiling Act of 2015 (RIPA) requirements DPD stop data, using DPD data reported under RIPA and other appropriate sources
 - DPD enforcement actions with regards to the homeless
 - Compliance with the Surveillance Technology Ordinance
 - Individual use of force investigations, including Taser usage, and use of force aggregate data
 - Body camera usage by officers and review by supervisors, Professional Standards, etc.

5. Recommend Changes/Improvements to Policy, Procedure, or Training

- Work with the DPAC to systematically review DPD existing policies and procedures and evaluate new or changed DPD policies.
- Work with the DPAC to systematically review DPD training.
- With input from the DPAC the IPA make written recommendations for improvements or changes to DPD policy, procedure, or training regarding any matter, with recommendations to the Police Chief.

6. Help Develop and Participate in Community Outreach

- Working closely with DPAC, help develop a community outreach plan and participate in community outreach efforts to both educate the community about the work of oversight in Davis and to hear from the community about current policing concerns. The initial outreach plan should take into consideration the variety of stakeholder groups that participated in the community engagement process and how to use social media to keep community members informed.

7. Produce Reports

- Publish written reports in conjunction with the DPAC, at least on an annual basis, to include information about: misconduct complaint investigations and trends; recommendations concerning improvements to DPD policy, procedures, or training; results of audits; and joint projects with the DPAC, including outreach.

8. Conduct independent investigations

- In cases in which the IPA deems an investigation insufficient or the DPD does not open an investigation, and recommendations for additional investigation are not heeded, after written notification to and concurrence from the City Manager and the City Attorney, the IPA may conduct additional or an independent investigation. The DPD will provide full access to all materials concerning the incident underlying the complaint and all relevant personnel.

9. Assess the work of the DPAC

- Provide annual written input to the City Manager on the effectiveness of the DPAC

RESOLUTION NO. 18-XXX, SERIES 2018

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS REGARDING THE STRUCTURE AND PURPOSE OF THE DAVIS POLICE ACCOUNTABILITY COMMISSION

WHEREAS, the City Council relies on Boards and Commissions to provide advice and information on subjects within the Commission's scope; and

WHEREAS, the Davis Police Department, in its 2017-2019 Strategic Plan has an objective to provide transparency and information to the public in a timely, efficient, and respectful manner and has a task committed to determining how to best implement the "21st Century Policing" plan.; and

WHEREAS, the purpose of the City of Davis Police oversight system is to increase transparency concerning policing practices and policies, build police accountability to the community and provide for ongoing correction and quality improvement; and

WHEREAS, the implementation of a community outreach plan that will inform the community about police oversight and receiving input from all members of the community about concerns and/or complaints they have concerning policing is an important part of an oversight system.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Davis creates a Davis Police Accountability Commission to achieve the following:

1. PURPOSE

The key role of the Davis Police Accountability Commission (DPAC) is to develop and implement a community outreach plan that will enable it to inform the community about police oversight and receive input from all members of the community about concerns and/or complaints they have concerning policing in Davis. The DPAC, along with the Independent Police Auditor, is a critical means to create more convenient channels for filing complaints.

As an advisory body of the Davis City Council, the commission is established and guided by the following documents:

- a. Commission Handbook; and
- b. Commission Policy Guidelines

2. MEMBERSHIP

The Davis Police Accountability Commission shall consist of nine (9) members and one (1) alternate. One member shall be a UC Davis student, appointed by ASUCD. The terms of this member may vary on the needs of ASUCD.

All other voting members of the Davis Police Accountability Commission, regular and alternate, shall be appointed by the City Council. Appointment of commissioners shall reflect a diverse representation of the community and include members of various ethnicities, racial backgrounds, sexual orientations, economic status, etc. Additionally, a minimum of two members appointed by council shall have demonstrated previous interactions with the Davis Police Department.

Two City Council members will be appointed as regular liaisons to the commission.

The alternate member shall not vote except upon one of the following conditions:

- a. Absence of one (1) or more of the regular members of the commission.
- b. Disqualification of a regular member of the commission because of an expressed conflict of interest.

3. TERMS OF OFFICE

Members of the commission shall serve a term of four (4) years, or until their successors are appointed. For purposes of establishing staggered terms, appointments may be for terms varying between one (1) and four (4) years as the Council may decide. No members shall serve for more than two (2) consecutive terms, except under special circumstances.

4. TERMINATION OF APPOINTMENT

The term of appointment of any member of the commission who has been absent from three (3) consecutive regular or special meetings, or who has missed more than 1/3 of the meetings in a 12-month period, without the approval of the City Council, shall automatically terminate.

Members of the Davis Police Accountability Commission serve at the pleasure of the Council and may be removed from office by a majority vote of the Council.

5. VACANCIES

Vacancies on the commission shall be filled for the unexpired term in the same manner in which regular appointments are otherwise made.

6. OFFICERS OF THE COMMISSION

The members of the Davis Police Accountability Commission annually shall select one (1) of its members as Chairperson and one (1) of its members as Vice Chairperson. No chairperson or vice chairperson shall serve more than two (2) consecutive years as chair.

- a. THE CHAIRPERSON of the commission shall call the meetings to order at the appointed time, shall appoint all committees, subject to the approval of the commission, shall have all the powers and duties of the presiding officer as described in "Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century," and shall perform such other duties as may from time to time be prescribed by the commission.
- b. THE VICE CHAIRPERSON of the commission shall have all the powers and perform all the duties of the Chairperson in the case of absence or inability of the Chairperson to act. The Vice Chairperson shall perform such other duties as may from time to time be prescribed by the commission or the Chairperson.

7. MEETINGS OF THE COMMISSION

The Davis Police Accountability Commission shall establish a calendar of meetings indicating date, time and location. In an effort to provide outreach to various communities, within Davis,

meetings may rotate locations. Special meetings of the commission may be called by the Chairperson, or by any four (4) or more voting members of the commission, with permission of the Council liaison or the City Council. Personal notice must be given to all members of the commission. If personal notice cannot be given, written notice must be mailed to such members at least twenty-four (24) hours prior to said meeting, unless said notice requirement is waived in writing by said member.

8. QUORUM

For the purpose of transacting business, a quorum of the Davis Police Accountability Commission shall consist of five (5) of the nine (9) members. An alternate member shall be counted as a full voting member for purposes of attaining a quorum.

9. FUNCTIONS OF THE COMMISSION

The Davis Police Accountability Commission shall have the responsibilities as provided in this section and such other duties as the Council may, from time to time, decide:

1. Develop Community Outreach Plan

- Develop and execute a community outreach plan with input from the Independent Police Auditor.
- Hold regularly-scheduled meetings and provide notice and an opportunity for community input. These meetings should be coordinated with various non-profit and/or faith-based groups to assure under-represented or vulnerable groups have a safe space to fully participate. All meetings will be open to the public.

2. Provide Input to Audit Davis Police Department Policies, Procedures, and Training

- Coordinate with the Independent Police Auditor to identify and prioritize topics for Independent Police Auditor auditing. The Independent Police Auditor will conduct the audits but the Davis Police Accountability Commission will provide input and recommendations on prioritization of audits.

3. Recommend Changes/Improvements to Policy, Procedure, or Training

- With Independent Police Auditor input, systematically review Davis Police Department policies and procedures and analyze new or changed policies.
- With Independent Police Auditor input, systematically review Davis Police Department training.
- Provides input to the Independent Police Auditor on recommendations for improvements to Davis Police Department policy, procedure, and training.

4. Review Independent Police Auditor Reports on Misconduct Complaints

- Receive Independent Police Auditor reports on misconduct complaints

- Recommend, for the Independent Police Auditor’s consideration, further analysis of complaints or the complaint process.
 - Work with the Independent Police Auditor and Davis Police Department to promote ACR/mediation as a complaint resolution option.
 - Request further investigation by the Independent Police Auditor.
5. Provide Input into Reports
- Provide input to the Independent Police Auditor into reports, at least on an annual basis, to include information about: misconduct complaint investigations and trends; recommendations concerning improvements to Davis Police Department policy, procedures, or training; results of audits; and joint projects with the Independent Police Auditor, including community outreach.
6. Assess the work of the Independent Police Auditor
- Provide annual written input to the City Manager and the City Council on the effectiveness of the Independent Police Auditor.
7. When time permits, respond to Davis Police Department requests for input on matters outside Independent Police Auditor/Commission priorities, such as commenting on new programs.

10. STIPEND

If the City Council adopts one, the Davis Police Accountability Commission will follow the City’s stipend policy.

PASSED AND ADOPTED by the City Council of the City of Davis this thirty first day of July 2018 by the following votes:

AYES:

NOES:

Brett Lee
Mayor

ATTEST:

Zoe Mirabile
City Clerk