
SUPPORTING ANALYSIS FOR THE CITY ADMINISTRATOR’S RECOMMENDATION REGARDING THE
FORMATION OF THE COMMUNITY POLICING COMMISSION FOR THE CITY OF ANN ARBOR

Howard S. Lazarus, City Administrator
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Acknowledgments

I would like to acknowledge the work of the persons who contributed to the development of this document over the past several years. These individuals and organizations include the City Council, members of the Advisory Task Force and the Human Rights Commission, the City Attorney, the Ann Arbor Police Department (AAPD), the City Administrator’s Office, and the many members of the Ann Arbor community who contributed their time and expertise on behalf of the City of Ann Arbor. Their diligence and perseverance demonstrates their seriousness of purpose and strong desire to establish a Community Policing Commission (the “Commission”) that will ensure a positive and respectful relationship between the Ann Arbor Police Department and the diverse community it serves.

Abstract

At its February 5, 2018 regular meeting, the Ann Arbor City Council adopted Resolution 18-0197¹ directing the City Administrator to solicit applicants for an Advisory Task Force and to provide these applicants to the Human Rights Commission for review and recommendation to Council for the March 19, 2018²; designate staff with the appropriate skills, knowledge, and seniority to assist the Task Force; and to work with the Task Force on areas of concern with the target of presenting the roles, responsibilities, and budget for the Commission at the September 4, 2018 Council meeting. Over the next six months, the members of the Advisory Task Force met formally twelve (12) times and devoted many additional hours to develop a proposed ordinance and supplemental report. Per the Council’s direction, the Task Force finalized its work product on August 30, 2018 with the intent of advising the City Administrator in developing recommendations to Council on the formation of the Commission. After diligent review, comparing the recommendations with relevant peer cities that have formed policing commissions, and consulting with the City Attorney, the City Administrator presented a working draft of recommendations to the Task Force on September 6, 2018 prior to submittal to Council. Based upon that final discussion with the Task Force, the City Administrator forwarded a formation resolution along this analysis, the Task Force’s work products, and other supporting references and documents to City Council for its deliberations.

¹ Resolution 18-0197, “Resolution Creating an Advisory Task Force to Make Recommendations Regarding the Roles and Responsibilities of a Community Policing Commission” was adopted on February 5, 2018. The resolution can be read in its entirety at <http://a2gov.legistar.com/LegislationDetail.aspx?ID=3334295&GUID=A8964351-EA41-467F-BEC2-55E5C528013A&FullText=1>.

² Resolution 18-0397, “Resolution to Confirm Members of an Advisory Task Force to Prepare a Recommendation Outlining the Roles and Responsibilities for a Proposed Community Policing Commission: was adopted on March 19, 2018. The resolution can be read in its entirety at: <http://a2gov.legistar.com/LegislationDetail.aspx?ID=3380326&GUID=2BE2B721-E007-4644-8DE4-97A36CBB91B>.

1.0 Purpose

This document accompanies the attached Resolution to Establish the Community Policing Commission, as directed in Resolution 18-0197 (referenced above). It provides the basis for the City Administrator's recommendations, including the following components:

- Discussion of the background leading to the formation of a Community Policing Commission.
- Comparison of the final submittal of the Advisory Task Force to the criteria Council established in Reference 1;
- Reconciliation of the City Administrator's Recommendation with the Task Force's proposal.
- References and Supporting Documentation.

2.0 Background

For the purposes of this analysis, the call for a police oversight commission was formally referenced for the first time in a report the City's Human Rights Commission (HRC) issued on November 4, 2015.³ Specifically, the report called for the following actions:

1. Create an independent, all-volunteer civilian police review board charged with a number of duties, the effect of which would be to foster positive police-community relations;
2. Temporarily engage the services of an experienced police auditor-consultant knowledgeable about best practices in policing, training, complaint handling, and oversight to conduct a thorough review and evaluation of present AAPD policies and practices, recommend whatever reforms may be needed, and help start up the civilian board.
3. Implement the use of alternative dispute resolution methods in resolving some types of complaints and increasing communication and understanding between community members and police officers; and
4. Consider implementing several other changes to the AAPD's approach to policing described at the end of the report.

Subsequent to receiving the report and in response to the second recommendation in the HRC's report, the City proceeded to procure the services of a consultant to perform an independent review of AAPD's community engagement practices. Through an open, transparent, and collaborative process the City awarded a contract to Hillard Heintze⁴, a firm specializing in security and law enforcement consulting and

³ The report titled, "Civilian Police Review: Recommendations for Strengthening Police-Community Relations in Ann Arbor" can be accessed at <http://a2gov.legistar.com/View.ashx?M=F&ID=4279898&GUID=BB5745B9-8874-43FA-9290-6BCF03D7F806>.

⁴ Hillard Heintze's web site is located at <https://www.hillardheintze.com/about/>. Note this reference is provided for information only and does not constitute an indorsement of the firm. The Hillard Heintze final report, "Ann Arbor Police Department, Independent Analysis of Community Engagement Practices," dated November 3, 2017, can be accessed at <https://www.washtenaw.org/1078/Aura-Rosser-Investigation>.

advisory services. The selection team that unanimously recommended Hillard Heintze consisted of the City Administrator, the Police Chief and a command staff officer, members of the HRC, and volunteers from diverse segments of the Ann Arbor community. The HRC also unanimously recommended the selection of Hillard Heintze to City Council.

The Hillard Heintze report was delivered to the City on November 3, 2017, and presented to a joint meeting of the City Council and HRC on November 16, 2017. The report contained forty recommendations in the following areas:

1. Civilian Review – Co-Produced Policing Committee
2. Community Engagement
3. Citizen Complaints and Discipline
4. Commission on Accreditation for Law Enforcement Agencies (CALEA) Implementation and Policy Review
5. Personnel Management Practices
6. Training

The primary focus of the Hillard Heintze report is the need to “bring the police and community together to work toward ensuring public safety in Ann Arbor through a shared vision and mutual accountability.”⁵ Consistent with this message, the recommendations in the report were oriented toward a collaborative, forward-looking approach.

It is important to note that although there are many areas of overlap and concurrence between the HRC report and the Hillard Heintze report, when presented to the joint meeting of Council and the HRC concerns were raised from community in attendance about the recommendations concerning the structure of the Co-Produced Policing Committee, the number of persons on the Hillard Heintze team with police backgrounds, and the difficulties Hillard Heintze experienced in engaging members of the community who have had negative interactions with AAPD all during its outreach efforts

Following the presentation of the results of the Hillard Heintze report, the City Administrator worked with Council Members and the HRC Chair to bring Resolutions 18-0917 and 18-0397 to Council for its consideration. During this time period, two matters of significant impact on the process occurred:

- Two changes occurred in the leadership of AAPD: the Police Chief retired and a new externally-recruited Deputy Chief was hired. The City Administrator committed to delay hiring a new Police Chief until the Task Force completed its work, seeking to engage the to-be-formed Commission in the hiring process. While the process to hire a recruiter for the Police Chief has commenced, the outreach efforts will be tied to recommendations from the Task Force concerning the timing of the formation of the Commission.
- AAPD achieved accreditation from the Commission on Accreditation for Law Enforcement Agencies (CALEA). Accreditation consisted of external review of AAPD’s policies and procedures to determine if they are consistent with national best practices and an audit to assess how the protocols are being followed. Less than 4% of law enforcement agencies nationwide are CALEA accredited.

⁵Hillard Heintze report, page 8.

3.0 Frame of Reference

The driving force in forming the City Administrator’s recommendation is direction from the City Council, which reflects the concerns of the Ann Arbor community. Council identified twenty specific items in the following areas for the Task Force to review and provide feedback: Education, Policing Practices, Incident Review, Reporting and Evaluations, and Commission Membership. The Task Force’s proposals influencing the City Administrator’s recommendations are summarized in **Section 4.0**. Due to the limited time available, and its desire to more broadly engage with the most affected members of the community, the Task Force was not able to provide detailed proposals on several of the twenty areas of interest. In those cases, the City Administrator’s recommendation is to defer consideration of those items until after the Commission is formed and can dive more deeply into them.

The Task Force members also repeatedly stated that their proposals were to be aspirational in nature. In areas where the Task Force’s recommendations created conflicts with relevant governing documents (including state statutes, the City Charter, collective bargaining agreements, and other appropriate practices) the City Administrator recommends deferring these items to the Commission for consideration except to the extent that resolution of these conflicts are necessary to establish the structure, roles, and responsibilities of the Commission.

One additional aspect of a frame of reference is comparison to peer cities. Although references were made to other cities during the Task Force’s deliberation, there was no structured approach to developing comparisons. The selection of peer cities is more art than science, and that the resulting comparisons must take into account the differences in governing structures, with the acknowledgement that the comparison may be imperfect and not related to governance issues under the Ann Arbor Charter.

Figure 1 below identifies eight peer cities that have a police commission. The cities were selected as they are all hosts to large public universities, are of similar size and student populations, and are all governed by a Council-Manager form of government. In addition to meeting these parameters, Kalamazoo and Grand Rapids were included to provide a comparison to peer cities in Michigan. Links to the Commission web sites are included in **Figure 1**. Additional information on the peer cities is provided primarily in **Section 5** of this analysis.

Figure 1 - Identification of Peer Cities		
City	Population Students	Police Commission
Ann Arbor, MI University of Michigan	<u>121,417</u> 44,718	TBD
Berkeley, CA (B) University of California	<u>112,580</u> 41,910	Police Review Commission https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Police_Review_Commission_Homepage.aspx
Eugene, OR (E) University of Oregon	<u>166,575</u> 22,980	Police Commission https://www.eugene-or.gov/664/Police-Commission
Fort Collins, CO (F) Colorado State University	<u>161,100</u> 33,058	Citizen Review Board https://www.fcgov.com/cityclerk/citizen-review.php
Grand Rapids, MI (G) Grand Valley State University	<u>188,040</u> 25,460	Grand Rapids Police Civilian Appeal Board https://www.grandrapidsmi.gov/Government/Boards-and-Commissions/Grand-Rapids-Police-Civilian-Appeal-Board
Huntsville, AL (H) University of ALA-Huntsville	<u>180,105</u> 38,563	Huntsville Police Citizens Advisory Council https://www.huntsvilleal.gov/government/boards-commissions/
Iowa City, IA (I) University of Iowa	<u>75,798</u> 33,334	Community Police Review Board https://www.icgov.org/city-government/boards/community-police-review-board-cprb
Kalamazoo, MI (K)	<u>74,262</u>	Citizens Public Safety Review and Appeal Board

Figure 1 - Identification of Peer Cities		
City	Population Students	Police Commission
Western Michigan University	23,252	https://kalamazoomi.igm2.com/Citizens/Board/1032-Citizen-Public-Safety-Review-and-Appeal-Board
Norman, OK (N) University of Oklahoma	<u>120,284</u> 31,250	Citizens Public Safety Oversight Commission http://www.normanok.gov/city/citizens-public-safety-oversight-committee

4.0 Reconciliation of the Recommendations with Council Direction

Resolution 18-0197 provided direction to the City Administrator in the following areas:

- RESOLVED...The recommendation may include discussion of the proposed Commission’s roles and responsibilities in the follow areas: Education, Policing Practices, Incident Review, Reporting and Evaluation, Commission Membership...
- RESOLVED, That it is requested that the task force’s recommendations be mindful of state law, the City Charter, existing collective bargaining agreements, and the Act 312 binding arbitration process, understanding that it will be with the authority of the Community Policing Commission to recommend that the City seek changes to the foregoing as necessary to achieve the Community Policing Commission goals; and
- RESOLVED, That the City Administrator...bring to City Council a resolution to establish the Community Policing Commission, detailing its roles and responsibilities and describing the anticipated budget and staffing impact...

Each of these areas is discussed in the paragraphs that follow.

4.1 Recommendations in the Areas of Education, Policing Practices, Incident Review, Reporting and Evaluation, and Commission Membership

Figure 2 on the succeeding pages provides a line-by-line reconciliation of the Task Force’s proposals to the Council’s direction.

FIGURE 2 – RECONCILIATION OF COUNCIL DIRECTION

ITEM	COUNCIL AREA OF INTEREST	DISCUSSION
<i>Education</i>		
1	Report and make recommendations regarding training and education of AAPD staff.	The Task Force did not specifically address this item. The City Administrator recommends the Commission include training and education requirements in its Annual Work Plan.
2	Report and make recommendations regarding the public education and communications efforts of AAPD and the City regarding police matters, including police policies and practices.	The Task Force provided recommendations in Section 3.3 of its work product, including the formation of a Youth Council. These recommendations should be incorporated into the Commission’s by-laws and specific tasks and activities be included in the Commission’s Annual Work Plan (AWP). To the extent that the AWP requires the procurement of outside resources, the City Administrator should reasonably support the Commission’s initiatives.
<i>Policing Practices</i>		
3	Receive periodic reports and review pertinent data regarding policing practices (e.g. hiring, discipline, budget, staffing, complaints, training, and compliance).	The Task Force included provisions in Section 3.4 of its work product for the Commission to be engaged with the hiring of the Police Chief, with which the City Administrator concurs.
4	Report and make recommendations regarding policing practices	Section 3.2.1 of the Task Force work product recommends allowing the Commission to review all policing practices, policies, and compliance with such, and making recommendations for improvements. To the extent the policies and practices do not disclose confidential operational information, the City Administrator concurs.
5	Mutual development with AAPD of a Policing Strategic Plan including community input.	Section 3.3 of the Task Force work product addresses Community Relations, however it should be noted that many of the Task Force members felt it was not the role of the Commission to work with AAPD on developing a Policing Strategic Plan. The City Administrator does, however, recommend that the Commission work with AAPD on its strategic plan, including annual budget collaboration, and the requirement be included in the formation documents for the Commission.
6	Explore non-law enforcement public safety interventions that complement the actions of AAPD, such as crisis intervention teams.	Although not specifically addressed in the Task Force’s work product, there was significant public comment on these topics. The City Administrator recommends the Commission work with AAPD to review current practices and needed improvements.

FIGURE 2 – RECONCILIATION OF COUNCIL DIRECTION

ITEM	COUNCIL AREA OF INTEREST	DISCUSSION
7	Receive police department policies and related forms for purposes of review and evaluation.	Section 3.2 of the Task Force work product generally addresses review of policies. This is a core area of Council interest, and the City Administrator recommends that the review of specific policies and procedures be part of the Commission’s AWP. The City Administrator also must retain the ability to redact certain aspects of operating procedures and tactics that would jeopardize the safety of the public and police officers if released.
Incident Review		
8	Receive and review reports from AAPD containing data on complaints and disciplinary actions.	
9	Report and make recommendations to AAPD, the City Administrator, and City Council regarding AAPD complaint process and outcomes.	
10	Evaluation civilian-AAPD alternative disputes process.	
11	Receive and review relevant records of civilian complaints upon Commission request.	
12	Create and implement procedures and criteria to receive civilian complaints.	
13	Receive civilian feedback regarding complaints, complaint investigation, and complaint outcomes.	
14	Perform post-action review of complaints and receive additional information regarding complaint outcomes upon request.	
15	Review incidents that resulted in complaints, injuries, or death for the purpose of identifying improvements in AAPD training, policies, procedures, or practices	
Comment: The Task Force provided a detailed process in Section 3.1 of its work product. The process includes steps and actions that are contradictory to state statutes, the City charter, and other requirements. The impacts of governance documents on the process are addressed in the sections below.		
Reporting and Evaluations		
16	Drafting and delivery of reports and evaluations that support Commission recommendations to AAPD, the City Administrator, and City Council.	Section 3.2 (Reports and Recommendations Concerning Policies, Practices, and Compliance) of the Task Force’s work product addresses Council’s intent in most areas. However, there are some concerns about providing confidential information to the advisory body. The imposition of mandatory response times to the extent that they would interfere with operations. The City Administrator recommends that these issues be resolved through collaboration among the Commission, the City Attorney, and the City Administrator.
17	Review of best practices and recommendations of data analytics to measure outcomes of policing	The Task Force did not specifically address the use of data analytics, however the use of data is inherently a part of providing information and reports. The strategic plan has been previously mentioned.

FIGURE 2 – RECONCILIATION OF COUNCIL DIRECTION

ITEM	COUNCIL AREA OF INTEREST	DISCUSSION
	initiatives, including the community policing strategic plan.	
<i>Commission Membership</i>		
18	Members of the commission should represent a broad cross section of the community that includes residents from communities most impacted by policing, as well as representatives from relevant fields such as mental health, restorative justice, and social work. Members of the commission should be residents of the City of Ann Arbor who are not employed by the City	The Task Force provided input and recommendations on the Composition of the Commission in Article 2 . The City Administrator’s recommendations are provided in subsequent sections.
19	Member responsibilities, including solicitation of community input.	
20	Required member training, including consideration of the Ann Arbor Citizens Academy, Citizens’ Police, Fire, and Courts Academy, and AAPD ride-alongs.	

4.2 Review and Recommendations Pertaining to Applicable State Law, the City Charter, Existing Collective Bargaining Agreements, and Other Relevant Documents.

The following state laws pertain significantly to the formation and operation of a Community Policing Commission:

Freedom of Information Act (FOIA)

FOIA regulates and sets requirements for the disclosure of certain public records of certain public bodies in the state. It is applicable to City commissions, or any other body which is created by state or local authority. The Act provides for actual, compensatory, and punitive penalties for non-compliance. FOIA has potential impacts on both the Commission's access to information and its abilities to maintain confidentiality.

Open Meetings Act (OMA)

OMA strengthens the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business in open meetings. City Council has confirmed the applicability of OMA to all City boards, task forces, commissions, committees, and their subcommittees by passage of Resolution R-642-11-91⁶, which requires all entities to "hold their meetings open to the public to the best of their abilities in the spirit of the Open Meetings Act."

The Task Force proposals allow complainants to appear before the Commission to discuss their complaint in a "closed session" meeting. The Open Meetings Act (OMA)⁷ limits under what circumstances a public body can meet in closed session.⁸ None of the permissible purposes to hold a closed session include meeting with a complainant to hear about a complaint against an officer. In fact, the only person who can request a closed session is the officer named in the complaint.⁹ Thus, the Task Force proposal, as written, does not comply with the OMA.

Compulsory Arbitration of Labor Disputes in Police and Fire Departments (Act 312 of 1969)

Act 312 provides for compulsory arbitration of labor disputes in municipal police departments. City labor agreements with uniformed officers are subject to the Act 312 process, and the terms of these agreements (discussed below) cannot be unilaterally changed. These restrictions impact the Task Force proposals concerning receiving and processing complaints and the review of investigation results.

⁶ Resolution R-642-11-91 is titled, "Resolution Regarding Open Meetings for City Committees, Commissions, Boards and Task Forces.

⁷ While the OMA may not directly apply to the future Commission, the City passed a resolution expressing its intent that all Boards and Commissions meetings be held in accordance with the OMA. *Resolution Regarding Open Meetings for City Committees, Commissions, Boards and Task Forces*, R-642-11-91 (Approved Nov. 4, 1991).

⁸ MCL 15.268.

⁹ "To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agency, *if the named person requests* a closed hearing." MCL 15.268(a) (emphasis added).

The primary governing document for the City of Ann Arbor is the City Charter. The following sections of the Charter impact the Task Force's proposals:

Boards and Commissions

The City Charter provides Council with the ability to create citizen boards (Section 5.17). These boards are advisory in nature, and their recommendations and actions cannot bind the City. The Charter allows the City Administrator, the Mayor and Council Members the privilege of attending the meetings of these boards and to take part in their discussions. Further, the creation of any such board "shall not serve to impair the authority and responsibility of the department head, the City Administrator, and the Council as otherwise provided in the Charter."

Commission Membership

Section 12.2(b) of the Charter states, "an unpaid appointive officer to a board or commission established pursuant to law...shall be eligible for appointment if he/she is a registered elector of this City, unless the requirement is waived by a resolution concurrent in by not less than seven members of the Council."

Legal Representation

Hiring of outside counsel would need to be done by the City Council pursuant to City Charter Section 5.2.c. The contract would be between the City Council and the outside counsel. Therefore, the "selection" of outside counsel by the Commission should be reviewed further with the City Attorney.

Contracting

Contracting is addressed in several places in the City Charter. Section 5 establishes responsibilities among the City Administrator, City Attorney, the City Clerk, and the Treasurer for the procurement and administration of contracts. Section 14 vests contracting authority with Council, however the City Administrator may award certain types of contracts up to \$25,000.

Personnel

The Charter establishes responsibility for personnel matters with the City Administrator. The hiring of staff (temporary or permanent) is accomplished by the Human Resources Department through standard hiring procedures to ensure the hiring is done in accordance with applicable federal, state, and local law.

The following additional governing documents pertain to the formation and operation of the Commission:

Collective Bargaining Agreements (CBA)¹⁰

The discipline process governing AAPD officers is governed by the CBA. The two areas that impact upon the Task Force recommendations concerning incident review and complaint processing are discussed below:

¹⁰The City has two collective bargaining agreements governing sworn officers – Ann Arbor Police Officers Association (AAPOA) for officers and COAM for police supervisors (sergeants and lieutenants). These are treated together under the term CBA.

Disclosure of Complaint to the Department

The Task Force proposes that a complainant may choose to file a complaint anonymously. That is in line with the Department's current practice of accepting complaints via any method (phone, in writing, in person, etc.) and allowing the complainant to remain anonymous. The issue, however, is the Task Force's proposal also gives discretion to the complainant as to whether he or she wants the Department to be made aware of the complaint.

The Collective Bargaining Agreement (CBA) between the City and the Ann Arbor Police Officer's Association (AAPOA) requires that complaints be disclosed to the named officer(s) within a specified time period. Specifically, the contract mandates that:

Upon substantiation of an allegation or complaint of misconduct from within the department *or from outside the department* which may result in disciplinary action against an employee, but *in no case more than fourteen (14) calendar days after the receipt of an allegation or complaint*, a supervisor shall inform the employee of the nature of the accusation and the identity of the complainant(s).¹¹

Upon the Commission's receipt of a complaint, the City is imputed with knowledge of the existence of a complaint and the contractual timelines are triggered. Even though the Commission cannot take any disciplinary action against an officer, if the Commission fails to inform the Department about a complaint, the Department and City may be prevented from taking any future disciplinary action due to a potential violation of clear contractual timelines. The Task Force's proposal is not consistent with the CBA and, instead, the Commission must refer all complaints to the Department as soon as they receive them.

Keeping Records "Under Seal"

Similarly, the Task Force proposes to allow complaints to be placed "under seal" at the complainant's request. The proposal was revised and appears to now leave an exception for when disclosure is required by law, such as under the Freedom of Information Act (FOIA), but it is unclear. FOIA is a pro-disclosure statute with a purpose of favoring public access to government-held information in order to further the public's understanding of the government's activities and operations. All public records are considered subject to disclosure unless material is specifically covered by an express exemption, which are narrowly construed.

There are no FOIA exemptions that would allow the Task Force or Commission to categorically prevent the disclosure of complaints by labeling them "anonymous," "confidential," or "under seal." The Commission may use these labels, but such designations will not prevent the required disclosure of public records in response to FOIA requests. Indeed, the City has received FOIA requests for complaints against officers in the past and, after applying the FOIA balancing test, has determined that certain complaints must be released (subject to certain redactions). While there is a FOIA exemption for investigatory records created by law enforcement, this exemption could only potentially apply to materials that the Commission receives from the Department. It would not apply to any materials created by the

¹¹ AAPOA CBA Article 6, Discipline and Discharge (emphasis added).

Commission in the course of its investigations because it is not a law enforcement agency. As such, the Commission does not have the power to categorically restrict the disclosure of its records.

Time Limitations

The Task Force proposes that there be no time limit for filing a complaint with the Commission. This proposal raises a number of concerns, including whether the named officer will receive proper due process in the event of an old claim. In nearly every complaint-driven process there is a limitation on when someone can make a complaint. Failure to make a complaint within the specified time frame can result in dismissal of the matter.

These time limitations ensure fairness and promote efficiency in the process. Fairness to the accused encapsulates due process concerns. The accused must be able to fairly defend him or herself. Evidence becomes stale overtime, as do witness recollections. Setting a time limit helps protect against fraudulent claims where evidence may be harder to verify. It also encourages complainants to bring the matter forward in a timely manner so it can be addressed and any remedial action can be promptly taken. Setting time limitations also promotes efficiency by allocating resources toward more recent claims and avoiding wasting resources searching for old information.

Compelling an Officer to Appear for Questioning

The Task Force has suggested that if the Commission wants to question an officer, and that officer does not want to appear voluntarily, the Chief “shall” order the officer to appear. Presumably, if the officer does not follow the Chief’s direction, he or she will be considered insubordinate and subject to discipline. We should not compel City employees to be questioned by a City Commission and then have them face disciplinary action if they fail to comply. There is a process set forth in the CBA regarding questioning of officers about complaints made against them. As the President of AAPOA stated in his response to this specific proposal, we should honor the CBA.

4.3 Establishment of the Community Policing Commission, Roles and Responsibilities, and Potential Budget and Staffing Impacts

Resolution 18-0197 requested that the Advisory Task Force provide recommendations to the City Administrator on Commission membership. The Task Force’s input was to address the following topics:

- Members of the commission should represent a broad cross section of the community that includes individual residents from communities most impacted by policing, as well as representatives from relevant fields such as mental health, restorative justice, and social work. Members of the commission should be residents of the City of Ann Arbor who are not employed by the City.
- Member responsibilities, including solicitation of community input.
- Required member training, including consideration of the Ann Arbor Citizens Academy, Citizens’ Police, Fire and Courts Academy, and AAPD ride-alongs.

Each of these topics and related matters are discussed in the sections that follow:

Title

The City Council has used the title of Community Policing Commission in its direction, and this reference is retained throughout the City Administrator's recommendations. However, at its concluding meeting the Task Force adopted the designation of the *Independent Community Police-Oversight Commission*. While many would dismiss the significance of the body's name, it is significant that the title address the important functions the Commission will perform. Throughout the deliberations of the Task Force, it was very important that the independent nature of the commission and its oversight role be prominently incorporated into the Commission's nature and clearly communicated. Many of the Task Force members and the participants who attended the meetings also recognized the necessity of building trust and relationships between the community and AAPD, hence Council may want to consider the criticality of the "bridge-building" function also be recognized in the Commissions title.

Roles and Responsibilities

The Commission shall have the following powers, duties, and responsibilities:

1. The Commission shall develop by-laws for its operation and present these to City Council for adoption not later than six months after its initial meeting. The by-laws shall consider all previous work, including studies and recommendations from the Advisory Task Force, City Administrator, City Attorney, and the AAPD.
2. The Commission shall develop a work plan that will present its biannual goals and objectives that will be provided as input for AAPD two-year financial plans. The Police Chief and city Administrator will reasonably accommodate resource requests as part of the preparation of the AAPD budget.
3. The Commission will provide an annual report describing its activities. At the one-year anniversary of its initiation, the Commission shall prepare a report of its activities and shall provide recommendations for an organizational ordinance to be adopted into City code. The ordinance shall be of similar structure and detail to the ordinances governing similar City commissions.
4. The Commission shall advise the City Council and City Administrator on the following areas:
 - a. The Commission shall have the authority to receive complaints and forward them to AAPD for investigation and resolution, including developing processes to protect the anonymity of an individual as allowed under law and governing regulations and documents.
 - b. The Commission shall have the authority to independently review resolutions of complaints and investigations, and produce reports of its findings. The City Administrator shall ensure the Commission is provided with access to the information and resources necessary for the Commission to perform its review, consistent with applicable laws, rules, and governing documents, and in a reasonable time and format.
 - c. The Commission shall receive and review recurring reports on AAPD activities from the Police Chief. The form and substance of these reports shall reflect community interest and will be based upon information that is available or can reasonably be provided.
 - d. The Commission shall review community policing policies and procedures and make recommendations to the City Administrator and the Police Chief considering best practices

nationally and from peer cities, and will reflect the concerns and input from community members.

Membership

The City Administrator recommends the following membership structure:

- The Commission shall consist of eleven voting members and two ex-officio members, and the members shall use the title “Commissioner.” The voting members have full rights of membership and will count towards establishing a quorum for each meeting. Rights of membership include the ability to participate in discussions, deliberations, and questioning of persons appearing before the commission; proposing resolutions and agenda topics; participating in training; and all other general rights of City Commissioners. Ex-officio members shall have all rights of membership, except they will not vote and will not count towards a quorum.
- The eleven voting members will consist of one member of City Council, one member who shall also be serving on the Human Rights Commission, and nine members selected from the community (as discussed below). Commissioners will be selected in accordance with the following criteria:
 - The Mayor shall submit nominations for membership on the Commission to City Council for approval. Council, at its discretion but with input from the Commission, will establish a process for identifying and nominating members. Appointment and if necessary dismissal of members shall be in accordance with the City Charter and the adopted bylaws of the Commission.
 - Members shall be residents of Ann Arbor, unless Council waives the residency requirement in accordance with the governing rules and regulations.
 - Council shall consider the purpose of the Commission in appointing members. In making appointments, “the Mayor and Council shall ensure that the overall membership of the Commission reflects the City’s diverse population. They will ensure that segments of the community that are vulnerable and have been marginalized are amply represented, and that the Commission includes members with a variety of skills, expertise, and life experiences bearing on the work of the Commission, such as people who have work or have worked in the fields of mediation, conflict resolution, mental health, housing, homelessness, anti-racism, transformative justice, municipal law, and law enforcement, and people who have had significant encounters with the police.”¹²
 - “The Commission shall make outreach efforts to encourage qualified members of the community, especially members of segments that are vulnerable and marginalized, to apply for or otherwise indicate interest in serving on the Commission. The Commission shall pass on to the Mayor or the Mayor’s designee all applications that it receives.”¹³
 - Current City employees, consultants, and contractors will not be considered for appointment.

¹² Language is taken verbatim from Section 2.2, Diversity of Membership of the Task Force work product.

¹³ Ibid.

- Persons who have been engaged in law enforcement within the past three years preceding consideration, either as warranted officers or in a non-warranted role directly involved in police operations, shall not be considered for appointment unless concurrence from a majority of the sitting Commissioners is provided.
- Members of the Commission will have the authority to appoint two ex-officio members to the Commission. Ex-officio members shall have all rights of full membership except that they may not engage in the voting process and do not count towards a quorum. The ex-officio members may include one or more members of high school or college age.
- Other than the Council and the HRC representatives (who are otherwise governed by the terms and conditions of their offices), Commissioners shall serve staggered three-year terms. No person shall serve for more than six consecutive years in any nine-year period. A person who, by virtue of this rule, would not be eligible to serve to the end of a term may nevertheless be appointed, but that seat will be deemed vacant when the person shall have competed six years of service within the previous nine years.
- During the start-up period of the Commission, Commissioners shall establish a mechanism for assigning initial one-year and two-year terms for some of its members. Commissions who draw an initial one- or two-year term shall not have those years of service count against the limitation of service restriction established in the preceding paragraph.

Training

The City Administrator is proposing a training regime that is more extensive than included in Section 4.6 of the Task Force report, including the following requirements:

- All new Commissioners will attend and complete a tailored version of the Citizen’s Public Safety Academy within six months of appointment entitled. AAPD will collaborate with the Commission on the content of the course of instruction, which will include completing a ride-along with an AAPD officer of not less than four hours.
- All new Commissioners will complete courses or programs related to equity and inherent bias. The Commission will prescribe the extent and content of the training, however the training should be similar to what AAPD officers and City staff receive. The Commission will work with AAPD and the designated point of contact in the City’s Human Resources Unit to align content.
- As part of its Annual Work Plan, the Commission will designate up to six hours of additional training annually for its Commissioners.
- The City will provide the required resources in the annual budget of the Commission to ensure the above training requirements are reasonably available to Commissioners.

It is important to note the concerns of the Task Force that the AAPD familiarization and orientation training of Commissioners be objective and not a “marketing campaign” for AAPD. The requirement that AAPD and the Commission collaborate on the content of the course of instruction provides appropriate “checks-and-balances” in program development.

Potential Budget and Staffing Impacts

In anticipation of the requirements contained in Resolution 18-0197, the City Administrator proposed and the Council approved an allocation of \$25,000 for the formation of a Community Policing Commission. In the year-to-date, a small portion of the allowance has been used to pay for administrative support of the Task Force. As the Commission is formed, the remaining funds will be used to support its start-up – including providing additional staffing support through the use of temporary labor and contracting for services. Should the allocation be insufficient to cover these requirements, the City Administrator will advise the Council of additional funding needed and the potential source(s) of the funding.

The resolution presented to Council provides budgeting and staffing direction to the City Administrator in the following two areas:

- The City Administrator shall provide administrative and logistical support to the Commission, including designating a staff liaison to assist in the scheduling and conduct of Commission meetings and activities and ensuring appropriate AAPD participation in Commission proceedings.
- The Commission shall develop a work plan that includes its biannual goals and objectives that will be provided as input for AAPD two-year financial plans. The Police Chief and City Administrator will reasonably accommodate the Commission’s resource requests as part of the preparation of the AAPD budget.

The staff liaison position is currently not in the budget, and will require the addition of a full time equivalent (FTE) to the City Administrator’s Office in anticipation of the Commission’s support requirements. The remaining elements of the budget required to support the Commission’s work plan will be provided as part of AAPD’s FY20/21 financial plan.

5.0 Reconciliation of the City Administrator’s Recommendations to the Task Force Proposal

As stated at the front of this analysis, the proposals offered by the Advisory Task Force are the result of extensive research and input, are both practical and aspirational in nature, and are deserving of thoughtful and respectful consideration. The purpose of the analysis in this section is not to provide a “side-by-side” review, but rather to address areas where there are significant differences and the rationale for deferring action until the Commission is created. The City Administrator’s recommendations intentionally maintain the authority and discretion of Council to establish and guide policy, and to provide appropriate “operating space” for the initial Commission members.

5.1 Independence and Oversight

The Task Force focused heavily on independence and oversight throughout its discussions. While these concepts are inherently related, they are presented separately in this section.

Independence

Several members of the Task Force stated throughout the public meetings that the police commission should be independent, and not subject to control or oversight by either the City Council or the City Administrator. The discussion of independence touched on several topics, including formation, budget and staffing, access to outside counsel, procurement, and access to information. These topic areas are discussed in the following paragraphs:

Formation

The Task Force identified the relationship of the Commission to Council and the Administration as a primary concern, and in some cases expressed a desire to operate in an orbit outside of Council and Administration control. These thoughts were captured in the following Article 1 paragraphs of the Task Force's proposed ordinance:

1.3. Independence. Although the Commission is created by the City, it must be functionally independent of City administration to perform its mission. In this respect the Commission is different from other entities created by the City Council to assist in performing its functions.

1.4 Nature of the Commission. The responsibilities of the Commission being broader than those indicated for departmental boards under Section 5.17(a) of the City Charter, the Commission shall be deemed to be a special commission authorized under Section 5.17(b) of the City Charter. The creation and operation of the Commission shall not impair the authority and responsibility of the Police Chief, the City Administrator, and the Council as provided in the City Charter.

The City Charter is the governing document in relation to these articles, as discussed below:

Section 5.17(a) of the City Charter specifically authorizes the Council to create a citizen board for the police department. The purpose of the board is to "serve as an advisory body to give counsel and advice to the head of the department and to the City Administrator in respect to all such matters coming within the authority of its department as the Council prescribes and shall have authority to make recommendations respecting such matters to the department head, the City Administrator, and the Council." The section further states, "The creation and operation of any such board shall not serve to impair the authority and responsibility of the department head, the City Administrator, and the Council as otherwise provided in the charter." Contrary to the Task Force's recommendation, this section of the Charter is most appropriate for the formation of the police commission as it allows the broadest suite of responsibilities to be assigned.

Section 5.17(b) of the City Charter addresses the Council's ability to create special commissions. These types of commissions do not apply to a police commission as special commissions are limited in scope to "make studies, submit reports and recommendations, and to take such other action as may be prescribed by the Council not inconsistent with this Charter." Creation of the police commission under this section of the City Charter is more restrictive than the interpretation in the Task Force's proposal, and is also subject to other limitations provided in the charter.

Regardless of which Charter section is referenced, the police commission is no different than any other board or commission the Council establishes as each entity created supports a core value of the Ann Arbor community. All commissions are creations of Council, and there is no authority for them to operate outside of Council's control. They must comply with all governing documents, and are by definition advisory to the department head, the City Administrator, and the Council and will study issues of concern, deliberate and collaborate with staff, and provide recommendations. While their work is significant, it is not binding on the City government. The independence of any board or commission is best expressed through the careful, unbiased, and frank consideration of matters under its consideration.

Independence of these bodies is assured by their ability to communicate directly with City Council, which due to its ability to engage (or dismiss) City officers (including the City Administrator and Police Chief) can assist in resolving any areas of concern. The processes by which the Commission operates are established in its bylaws, which are submitted for legal review and approval by the Council. However, the "creation

and operation of any such board shall not serve to impair the authority and responsibility of the department head, the City Administrator, and the Council”¹⁴ as otherwise provided in the City Charter.

It is significant that the policing commissions in all of the peer cities identified in Figure 1 all operate under the authority of the City Council. Most report either directly to City Council or through the City Manager/Administrator, although Police Citizens Advisory Council in Huntsville serves as an advisory board to the Police Chief.¹⁵ The Grand Rapids Police Civilian Appeal Board falls under the supervision of the City Attorney.¹⁶

Budget and Staffing

The City Charter vests approval authority for the budget with City Council, and responsibility for administering the budget and personnel/staffing matters with the City Administrator.¹⁷ These controls are necessary to ensure “checks and balances,” and no entity may operate outside of them.

The Task Force has proposed requiring a minimum funding level of 1.17% of AAPD’s budget by ordinance. The members cite the City of Berkeley Police Review Commission has a funding level of 1.07% in the current year budget¹⁸, however this amount is not set by ordinance. Of the \$738K in the budget, only \$27,000 is available for Services and Materials (with the rest being used for Salaries and Benefits and Internal Services). By comparison, the current year budget for the City of Ann Arbor provides \$25,000 for Services and Materials, and the costs for support personnel and internal costs have been absorbed in the budgets of either the City Administrator or Police Department.

It is also significant to note that the City of Berkeley has a General Fund operating deficit of more than \$5M, which has been closed using one-time funds. Ann Arbor’s budgeting processes do not allow the allocation of non-recurring revenues to address recurring requirements. Ann Arbor also specifically ties the allocations of resources to specific services. The City Administrator’s recommendation that the budget for the Community Policing Commission be tied to the activities and outcomes identified in the Commission’s Annual Work Plan.

As noted above, Berkeley has three full-time personnel supporting the Police Review Commission: a Police Review Commission Officer, an Investigator, and an Office Specialist. It is important to consider that the Police Review Commission also may consider matters outside of both the Berkeley Police Department and the City government,¹⁹ which are not authorities considered under the direction received in Ann Arbor Council Resolution 18-0197.

The draft resolution for the formation of the Ann Arbor Community Police Commission requires the City Administrator to designate a liaison for the Commission, which does require the addition of an FTE in the FY20/21 Financial Plan. The Administrator’s recommendation is that other staffing requirements be

¹⁴ Ann Arbor City Charter, Section 5.17.a.

¹⁵Article XI, City of Huntsville Code of Ordinances.

¹⁶Grand Rapids Police Civilian Review Board website, <https://www.grandrapidsmi.gov/Government/Boards-and-Commissions/Grand-Rapids-Police-Civilian-Appeal-Board>.

¹⁷ Ann Arbor City Charter, Sections 5 and 8.

¹⁸ City of Berkeley Fiscal Years 2018 & 2019 Adopted Biennial Budget, pages 215-226.

¹⁹City of Berkeley Ordinance No, 4644-N.S.

developed subsequent to the Commission's Annual Work Plan and the demonstrated need as the Commission begins its operation. In the short term, additional service support can be obtained using temporary staff or by contract.

Access to Outside Counsel

Section 4.4 of the Task Force's proposal states, "It is crucial for the functional independence, and thus for the success of the Commission that it has its own legal counsel. The Commission shall therefore select one or more attorneys to advise it on a continuing basis. The City Council shall take such actions as may be necessary under the Charter to ensure that the Commission has counsel of its choice."

The hiring of outside counsel would need to be done by the City Council pursuant to City Charter Section 5.2.c, which states "Upon the [City] Attorney's recommendation, or upon its own initiative, the Council may retain special legal Counsel to handle any matter in which the City has an interest, or to assist the Attorney therein." Under the Charter, the contract would be between the City Council and the outside counsel, and any privilege would accrue to the Council and not the Commission. Therefore, the "selection" and employment of outside counsel by the Commission should be reviewed further with the City Attorney on a case-by-case basis.

Additional Procedures and Rules of Operation and Relation to Other City Law

The Task Force has proposed in Sections 4.7 and 4.9 that it have the ability to promulgate additional procedures and rules of operation, and that any provisions that may be incorporated into a foundation ordinance for the Commission that conflict with other "City law of any type" prevail over the conflicting provisions other than the City Charter. This is a broad statement that needs additional review, and on its surface conflicts with the provision in Section 5.17 of the Charter that the activities of a board "shall not serve to impair the authority and responsibility of the department head, the City Administrator, and the Council as otherwise provided in the Charter."

Many of the recommendations in the Task Force proposal address the procedures of the Commission. These are best addressed in the Commission's by-laws. Resolution 08-1129 requires Council approve the by-laws for new boards and commissions and all amendments and revisions to ensure compliance with all applicable laws and uniformity and consistency of format and content.

Oversight

Oversight of AAPD is the primary concern among the Task Force members and the members of the community who attended the many sessions of the Task Force and worked to provide input for the Task Force's deliberations. The Task Force focused on two principal areas in defining oversight: Recommendations Concerning Policies, Practices, and Compliance and Incident Review (including citizens' filing of complaints). Each of these is discussed below:

Review of Policies, Practice and Compliance

The review of policing policies and practices, and compliance with these documents is a common thread among peer city boards and commissions, and is recognized as a critical aspect of the Ann Arbor Commission. The process is addressed in Section 3.2 of the Task Force proposal, and there is generally broad concurrence with the content of the section. However there are two areas of concern that the Commission will need to address once formed. First, the City Administrator has recognized that there are limited instances where the release of police operating practices may place the safety of the public and/or

the responding officers at risk. Examples include tactics for responding to terrorist or active shooter incidents. The ability to share these procedures are dependent upon the ability to maintain confidentiality with Commission members. The second area of concern is the mandatory response period established in Section 3.2.4 of the Task Force proposal. The concern is that without a “check-and-balance,” unreasonable requests from the Commission may interfere with the operations of the City and AAPD. The wording of a process addressing this section should be a matter of collaboration among the involved parties.

Incident Review and Filing of Civilian Complaints

Section 3.1 of the Task Force proposal addresses incident review, and provides detailed processes that need further analysis and discussion. Much of what is in Section 3.1 is procedural in nature and is best addressed through procedure rather than by inclusion in an ordinance. Policy dictates that complaints may be filed with AAPD or the Commission, and may be filed anonymously. Procedure provides the means and methods to do so, with the recognition that technological changes should not require amendment of City ordinances. The issues related to the Commission’s flexibility in disclosing complaints to AAPD, keeping complaints “under seal,” time limitations, and compelling officers to appear have been previously identified in this document.

5.2 Membership and Training

The City Administrator’s recommendations for “membership” on the Commission and the proposed training requirements were previously presented and vary slightly from the proposals contained in the Task Force work product. The rationale for the variances are explored below:

Commission Structure

The Task Force proposed that the Commission consist of eleven voting members, each serving a three year term limited to six years over a nine year period, with which the City Administrator agrees. The number of commissioners places the Commission as one of the larger ones in the City, and is slightly larger than the boards and commissions in peer cities, but the larger membership provides the opportunity for broader representation. The Administrator also is recommending that one of the members be a sitting member of Council and one be a sitting Commissioner on the HRC. The presence of a sitting Council Member is consistent with other City boards (e.g. Planning, Transportation, Environmental and Energy Commissions). The inclusion of a sitting member of the HRC is mindful of the overlap between human rights protection and community policing practices.

The City Administrator also recommends the Commission include two non-voting, advisory members. The inclusion of these two positions provides the Commission with the opportunity to gain additional perspectives from persons who may not meet the requirements of the Section 12.2(b) of the City Charter (registered elector of the City), including the youth member or other persons designated by the Commission.

Recruitment of Members

The Task Force recommends that the recruitment of Commission members be a function of the HRC, with which the City Administrator disagrees. Primarily, the City Council should retain the ability to recruit members that are reflective of the community unless Council designates a process that reduces its latitude. Secondly, the Commission is to be independent, including separate from the influence of other boards and commissions. The placement of an HRC member on the Commission, as indicated above, ensures HRC perspectives will be represented.

The Task Force proposed two restrictions on eligibility for membership. The City Administrator agrees with the prohibition on current City employees serving on the Commission. However, the permanent, life-long restriction on persons who have served in law enforcement is inherently discriminatory and unfair. The City Administrator does propose a three-year restriction on persons who served as either sworn officers or who had a direct role in law enforcement in a non-sworn capacity.

Training

The City Administrator, following the suggestion of Council, has recommended that the initial training of Commission members include a form of the Citizens' Public Safety Academy and a ride-along with an AAPD officer. The rationale is that the oversight role, including the review of police practices, requires familiarity with the subject matter. The City Administrator has also proposed six hours of additional training, to be determined by the Commission and included in the Annual Work Plan, and for which resources will be reasonably provided.

This topic was divisive when discussed at a Task Force meeting, with both Task Force members and persons in attendance expressing strong disagreement over the requirement for the familiarization and ride-along session.

5.3 Availability of Information: Disputes Resolution/Subpoena Powers/Confidentiality

The topics of disputes resolution, subpoena powers, and confidentiality of information are interrelated as they relate to the availability of information and require additional discussion and legal review as the Commission is formed. There is no doubt that in the future there will be disagreement over under what conditions information may be or may need to be withheld or redacted. The processes put in place must be protective of the public's interest and consistent with the intent and authorities contained in the relevant governance documents.

5.4 Areas for Further Study and Consideration

The areas identified below were raised during the deliberations of the Task Force and the public comment during Task Force meetings. The Commission, once in-place, may want to consider them as topics for inclusion in its Annual Work Plan.

Community Ombudsperson

The discussion of creating an ombudsperson position was raised concerning the availability of data, but also is applicable to providing an intermediary for community members in their dealings with the City as an entity – including on police matters. The ombudsperson could be significantly effective in addressing how the City receives complaints concerning sexual misconduct and assault.

Police Training

Task Force and community members discussed the types of training afforded to AAPD officers. Topics mentioned include the history of policing, equity and inherent bias, de-escalation, and addressing mental health concerns. While several of these topics are already included in the AAPD training regimen, the Commission may want to review the content and means of presentation.

Recruiting

The perceived and actual lack of diversity in AAPD was an area of concern raised during the Task Force process. While AAPD has made significant advances in its outreach efforts – including providing

sponsorships, launching a future police cadet program, and participating in other community-focused initiatives, additional and innovative efforts are required.

Stipends and Reimbursements

The Task Force received recommendations that (a) stipends be provided to the youth member(s) of the Commission and (b) reimbursement for child care expenses be provided to support broader potential membership. While board and commission members are generally not allowed to be paid or receive compensation, the City Administrator does recommend investigating the means by which stipends could be paid and child care costs reimbursed.

6.0 References

The following references were used in preparing this document:

Michigan State Statutes

Michigan Freedom of Information Act

Michigan Open Meetings Act

Compulsory Arbitration of Labor Disputes in Police and Fire Departments (Act 312 of 1969)

City of Ann Arbor

Ann Arbor City Charter

Resolution 18-0197, "Resolution Creating an Advisory Task Force to Make Recommendations Regarding the Roles and Responsibilities of a Community Policing Commission" was adopted on February 5, 2018.

Resolution 18-0397, "Resolution to Confirm Members of an Advisory Task Force to Prepare a Recommendation Outlining the Roles and Responsibilities for a Proposed Community Policing Commission: was adopted on March 19, 2018.

Draft of the Police Commission Ordinance (Task Force Work Product)

Draft Resolution to Form a Community Policing Commission, City Administrator, Ann Arbor, MI.

"Civilian Police Review: Recommendations for Strengthening Police-Community Relations in Ann Arbor," 2015, Human Rights Commission.

"Ann Arbor Police Department, Independent Analysis of Community Engagement Practices," dated November 3, 2017, Hillard Heintze.

Peer Cities

Police Review Commission, Berkeley, CA.

City of Berkeley Fiscal Year 2018-2019 Adopted Biennial Budget.

City of Berkeley Police Review Commission 2016 Annual Report.

Code of Ordinances, City of Berkeley, CA.

Police Commission, Eugene, OR

Citizen Review Board, Fort Collins, CO.

Grand Rapids Police Civilian Appeal Board, Grand Rapids, MI.

Huntsville Police Citizens Advisory Council, Huntsville, AL.

Code of Ordinances, City of Iowa City, IA.

Community Police Review Board, Iowa City, IA.

Citizens Public Safety Review and Appeal Board, Kalamazoo, MI.

Citizens Public Safety Oversight Commission, Norman, OK.