

# **Comparative Analysis of Differences Between the Task Force on Establishing Civilian Oversight's Recommendations and Mayor's Ordinance 2022-091**

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## ***Overview***

This summary is provided to highlight the similarities and differences between the final recommendations of the Task Force on Establishing Civilian Oversight and the Mayor's proposal as outlined in Ordinance 2022-091. The Mayor's Office has stated that the proposals share many similarities and a comparative table was prepared by Joyce Davis and Myrtle Brown and shared with City Council. However, as this analysis highlights, there are more differences than similarities.

The table shared with City Council does not speak directly to the impact of the differences between the Task Force Recommendations and the proposed ordinance. While some of the comparisons made in the table suggest similarity, the two are quite different upon closer examination. Moreover, there are inaccuracies in the table as they relate to the Task Force recommendations. The Task Force did not recommend that the civilian oversight body be involved in hiring decisions. In regard to the firing of police officers, if the civilian review board were granted binding disciplinary authority, there may be a very small number of cases in which appropriate disciplinary action would be termination, but this would be very uncommon. Personnel decisions unrelated to officer discipline would continue to be handled by the department. The table also indicated that the Task Force recommended review of retroactive complaints, which is inaccurate. The recommendation was to accept prior complaints only for record-keeping purposes, not for investigation or review. Finally, the comparison table incorrectly indicates that the Task Force estimated the annual budget at 1.6 million, when it was estimated at 1.2 million.

The Mayor has also suggested that Ord. 2022-091 gives the civilian oversight body the maximum authority allowed under Virginia State Law. This is factually incorrect. SB 5035 authorizes the following powers under Virginia State Law:

1. receive, investigate, and issue findings on complaints from civilians regarding conduct of law-enforcement officers and civilian employees;
2. investigate and issue findings on incidents, including the use of force by a law-enforcement officer, death or serious injury to any person held in custody, serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law-enforcement officers or civilian employees;

3. make binding disciplinary determinations in cases that involve serious breaches of departmental and professional standards
4. investigate policies, practices, and procedures of law-enforcement agencies and make recommendations regarding changes to such policies, practices, and procedures
5. review all investigations conducted internally by law-enforcement agencies and issue findings regarding the accuracy, completeness, and impartiality of such investigations and the sufficiency of any discipline resulting from such investigations
6. request reports of the annual expenditures of law-enforcement agencies and make budgetary recommendations
7. make public reports on the activities of the law-enforcement civilian oversight body
8. undertake any other duties as reasonably necessary for the law-enforcement civilian oversight body to effectuate its lawful purpose to effectively oversee the law-enforcement agencies as authorized by the locality

Ord. 2022-091 does not allow for the civilian oversight body to receive complaints, make binding disciplinary determinations, or review or make recommendations regarding police budgets. These are powers allowed under state law that were also recommended by the Task Force.

As written Ord. 2022-091 provides other powers granted by SB 5035 only in a limited context. While the proposed civilian oversight body can conduct independent investigations, these are supplemental to an already completed internal affairs process, regarding specific types of complaints, and only when the “accuracy, completeness, and impartiality” of the internal affairs investigation is in question.

***Structure and Independence from Police: Different***

The recommendations of the Task Force was to remove the entire complaints process from the police department, with a newly created city office intaking, investigating, hearing, and making a determination of findings for all complaints. Thus, both the CRB and complaints process are independent from police based on the Task Force recommendations.

While Ord. 2022-091 does locate the CRB outside of the police department, the complaints process is not independent of Richmond Police Department. RPD would still intake, investigate, and make a determination of findings prior to some cases being reviewed by the CRB. Additionally, the Chief of Police’s ability to appoint a member to the CRB as outlined in the ordinance undermines the full independence of that body.

### ***Scope of Powers: Different***

Ord. 2022-091 only allows the CRB to review investigations after they have been completed by Internal Affairs in specific circumstances:

1. Police officer-involved shootings.
2. Deaths of persons while held in the custody of the Department of Police.
3. Serious injuries to persons while held in the custody of the Department of Police.
4. Accusations of physical or verbal abuse by officers of the Department of Police.
5. Appeals by citizens of a finding or decision of the Department of Police.

The Task Force recommended that all complaints be heard, not just complaints that fall into these categories. Particularly because categories such as “verbal abuse” could be subject to interpretation and possible bias. For example, this could allow RPD to make determinations about what constitutes discourtesy vs. verbal abuse and impact whether that case is eventually heard by the CRB. Additionally, the Task Force recommended that the CRB not just review investigations, but to have hired investigators as part of a newly formed city office to conduct independent investigations into complaints, not internal affairs. As mentioned above, this would effectively put the entire complaints process in the hands of the CRB, rather than housing it within RPD.

The Task Force also recommended the ability to make policy recommendations; however the ordinance limits those recommendations to policies and procedures specifically related to the limited number of cases it hears. Additionally, the Task Force recommended the power to audit police data to understand trends in policing, which is also limited in the ordinance to the cases it hears. Finally, the ordinance explicitly prohibits budget reviews and recommendations, which were powers recommended by the Task Force.

### ***Composition and Appointment of Members: Different***

The Task Force recommended that City Council appoint members to the CRB through a committee selection process and subsequent confirmation by full council. Ord. 2022-091 gives Council the ability to appoint 3 seats, the Mayor the ability to appoint 3 seats, and the Police Chief the ability to appoint 1 seat. This is substantially different, as it is rare among CRB’s nationwide that a Chief of Police appoints any members of the CRB. Moreover, this raises questions about the independence of the CRB. Finally, given the appointment process for the Chief of Police in Richmond and administrative structure of the city, this gives the potential for a majority of seats to be appointed in a way that gives undue influence to the administration or police. This represents a substantial difference between the two proposals.

The number of members of the CRB also differed between the Task Force recommendations and Ord. 2022-091. The Task Force proposed 11 members, while the ordinance proposes 7. The recommendation for 11 was to include a diverse assortment of community members, which the ordinance also supports. The number of members likely does not present a substantial difference except in consideration of how appointments are allocated.

***Qualifications of Members and Law Enforcement Participation: Similar***

Both the Ordinance proposed and Task Force recommendations suggest a CRB be representative of the City of Richmond. Likewise, each of these take into account state legislation prohibiting the involvement of law enforcement officers on the CRB.

***Subpoena Power: Limited by Ordinance***

Both the Task Force recommendations and Ord. 2022-091 do grant subpoena power to the CRB. However, subpoena power is substantially limited under the ordinance. First, a subpoena can only be issued in relation to the limited scope of cases that it hears. Additionally, the ordinance requires five members of a board of seven to request an application to the Circuit Court of Richmond, not a simple majority. So while subpoena power is granted under the ordinance, it significantly diminishes this power as they was suggested by the Task Force.

***Binding Disciplinary Authority: Different***

The Task Force recommended binding disciplinary authority, while Ord. 2022-091 only provides recommendations to the Chief of Police.

***Compensation for CRB Members: Limited by Ordinance***

Both suggest compensation of \$100 per meeting for CRB members. The Task Force recommendations did not set an annual cap for compensation, recognizing that the CRB may need to meet more than once a month to fulfill its duties, while the ordinance caps compensation at \$1,200 annually.

***Staff to CRB: Different***

Ord. 2022-091 provides only one full time city staff person to the CRB, housed within the office of the inspector general. The Task Force recommended the creation of a new city office due to the staffing requirements associated with a CRB that would intake complaints, investigate them independently, engage in analysis of police policy, and draft reports and recommendations. Staffing an office dedicated to fulfilling those duties would require approximately 10 dedicated staff, inclusive of investigators. The disparate staffing in the ordinance as compared to the Task Force recommendations is directly reflective of the reduced scope of duty outlined in the ordinance.

### ***Budget: Different***

The Task Force estimated a budget of approximately 1.2 million dollars annually given the staffing outlined above. Ord. 2022-091 provides a suggested \$200,000 annually on an ongoing basis to pay for a single staff person in the inspector general's office, pay stipends to board members, hire outside legal counsel, and to hire independent investigators when necessary. However, the ordinance could limit the hiring of independent investigators, as this is pending availability of funds; this could result in a situation where additional investigation could be necessary, but fail to occur due to lack of funding.

### ***Location of CRB in Government Structure and Physical Location: Different***

The ordinance creates an advisory board to the city with one employee housed in the Inspector General's office. The Task Force recommendation was to create an Office of Community Oversight and Police Accountability independent from other city offices. The creation of a new office was proposed in order to reduce potential conflicts of interest and cognizant of the staffing necessitated by the scope of powers and duties outlined in the Task Force recommendations.

Differences in the physical location cannot be determined, as this is not outlined in the ordinance.

### ***Conclusion***

As outlined above, there are substantial differences between Ord. 2022-091 and the recommendations of the Task Force on Establishing Civilian Oversight. These differences significantly reduce the ability of the CRB to provide meaningful oversight of the Richmond Police Department and fail to address community concerns about the current complaints process, as the CRB proposed in the ordinance leaves the current process intact. The Mayor's ordinance merely adds an additional layer of review at the end of the current process and only under limited circumstances. As currently drafted, the ordinance would create a CRB with the fewest powers of any CRB in the state of Virginia.