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TO: Milwaukee County Board of Supervisors

FROM: Margaret C. Daun
Colleen A. Foley
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DATE: March 1, 2018

RE: 2018 Adopted Budget Amendment 1A023 re Citizen Review Board

Amendment 1A023 of the adopted 2018 Milwaukee County budget requested that the Office of Corporation Counsel provide a written report to the Board on “examples, options, best practices, and strategies for implementation of a Citizen Review Board for Milwaukee County, including staff and resource requirements. The purpose of the Citizen Review Board is to review incidents and citizen complaints regarding Milwaukee County law enforcement and correctional officers.”

Respectfully, the Office of Corporation Counsel suggests that the typical and most efficient referral for this work is to the Legislative Research Division of the Comptroller’s Office, whose duties include the research and drafting of legislation and policy initiatives such as this. Of course, the OCC will be happy to advise and assist the Research Division and/or Supervisors regarding legal risks and implications of any initiative. Referral to the Research Division would also avoid any delays in the development of an initiative that could result from the current staffing and workload challenges in the OCC.

Notwithstanding the foregoing, to assist the Legislative Research Division and to provide further food for thought to the Board, in this memorandum the OCC provides some initial information in response to Amendment 1A023.

Locally, the City of Milwaukee’s Fire & Police Commission is a nationally-heralded example of a “citizen review board.” Attached please find the Rules of the FPC (Ex. 1), the the 2017 “police satisfaction” survey (Ex. 2), the 2016 “citizen complaint” report (Ex. 3), as well as their 2016 Annual Report (Ex. 4). The OCC will be meeting with Attorney Steven DeVougas, who is the current chairman of the FPC, on March 12, 2018 to further discuss the City’s FPC. Mr. Cady and his staff are welcome to join the meeting as well.

Here are some baseline facts about the City’s FPC:

- The FPC’s scope of authority is vast, and is specified under state statute (Wis. Stat. § 62.50), as well as the City Charter. According to its website, the FPC:

oversees all aspects of Fire Department and Police Department operations. The Commission sets overall policy while the chief of each department manages daily operations and implements the Commission's policy direction and goals. Specific Commission functions also include: establishing recruitment and testing standards for positions in the Fire and Police Departments, hearing appeals by members of either department who have been disciplined by their Chief, independently investigating and monitoring citizen complaints, and disciplining employees for misconduct.

- A well-publicized example of the FPC's broad oversight powers was the FPC's directive to MPD to change its pursuit policy in 2017. See <http://fox6now.com/2017/09/07/fpc-to-take-up-new-mpd-policy-that-would-allow-officers-to-pursue-reckless-vehicles-mobile-drug-traffickers/>
- Budget, staffing, and commissioners of the FPC:
 - The FPC's annual budget is approximately \$2.5 million.
 - Currently, the FPC has a staff of 16, which will be increasing to 20.
 - The FPC is comprised of 7 civilian commissioners, who each earn a stipend of \$6,600 per year.
- The FPC receives approximately 240-250 citizen complaints per year:
 - All complaints are investigated unless the complaint dates back 6 months or more.
 - The vast majority of these complaints are not sustained or are otherwise resolved by what is referred to as "rapid resolution" (i.e., this is typically a phone call from the supervisor of the subject of the complaint to the complaining citizen to explain what occurred).
 - If there is any complaint that touches upon any claim of criminal wrongdoing, is the subject of an ongoing Internal Affairs investigation or a civil litigation matter (or overlaps with any other investigation), the FPC declines to investigate.
- There are essentially 5 different complaint tracks (see also, FPC Intake Rules, Ex. 5):
 - Rapid resolution – conversation to resolve; vast majority of cases.
 - Mediation – voluntary option for both citizen complainant and the subject of the complaint; a third-party contractor use third party contractor, all voluntary for both sides. Very successful. Not used that often bc unions resist.
 - Referral for a Complaint Trial – this is a multistep, formal process that includes a formal interview of the employee that is the subject of the complaint (implicating *Garrity* rights), and potentially, an administrative hearing if there is a basis to believe a violation of a rule, policy, or procedure has occurred.
 - Referral for policy training
 - Dismissal
- The Executive Director makes the initial decision on the appropriate track and the initial decision on every complaint. In response to that decision, the complaining citizen has 30 days to appeal to a committee of the board. The FPC has formalized rules and procedures for appeals.

- ***Most importantly, as noted above, the FPC can dictate policies for the Fire and Police Departments and has disciplinary authority over all police and fire personnel, inclusive of all executive leadership. This means that the FPC hires, fires, and supervises both the Police Chief and Fire Chief.***

Rule II of the Rules of the FPC specifies its scope of authority and state in part:

Section 1. These Rules shall apply to all positions in the Fire Department and the Police Department in the City of Milwaukee which are under the jurisdiction of the Board of Fire and Police Commissioners, and to the conduct of all business relating to the functions and responsibilities of the Board. (Rev. 7/26/01)

Section 2. These Rules shall become effective immediately upon adoption by the Board and shall be published and distributed. Any Fire or Police Department rule, regulation, or standard operating procedure shall be subordinate to the Board Rules. (Rev. 3/6/03)

Section 3. (a) The Board shall, on an ongoing basis, review all aspects of the operations of the Fire and Police Departments, including, but not limited to, a consideration of discipline, promotion, work rules, standard operating procedures, and other procedures relating to the conduct of employees of the Fire and Police Departments. The Commission, and Commission members or staff when authorized by the Commission, shall have full access to observe and review all department activities. (Rev. 10/4/01)

(b) The Board may prescribe rules for the governance of each department. A Chief may not suspend any rule prescribed by the Board. (Rev. 7/26/01)

(c) The Chief of each department may propose rules for the governance of the department. Any rule proposed by a Chief shall be subject to review and approval by the Board. Any rule proposed by a Chief shall not take effect until the rule is reviewed and approved by the Board. (Rev. 7/26/01)

Thus, a threshold question for Milwaukee County is what authority, if any, would a CRB have over the Sheriff's Department?

It is the opinion of the OCC that a court would most likely conclude that a CRB in Milwaukee County could only provide recommendations regarding Sheriff's Department policies and procedures, as well as the discipline of an employee of the Sheriff's Department. Furthermore, it is not likely that a court would conclude that a CRB in Milwaukee County could compel the Sheriff's Department to participate in or cooperate with any CRB investigation. One of the most compelling statements from the numerous cases informing our foregoing opinion is this:

Within the field of his responsibility for the maintenance of law and order the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of this county, though he may be removed by the governor for cause. No other county official supervises his work or can require a report or an accounting from him concerning his performance of his duty. He chooses his own ways and means of performing it.

Andreski v. Industrial Comm'n, 261 Wis. 234, 240 (1952).

Furthermore, unlike the state statutes that confer broad oversight powers to CRBs in cities, towns, and villages, no state statute makes any similar grant of powers to – nor even hints at the mere existence of – County CRBs.

Finally, a likely source for “best practices” and comparative CRBs in other jurisdictions will be the National Association for Civilian Oversight of Law Enforcement. Its website can be found here: <http://www.nacole.org/> We have attached NACOLE’s Core Competencies (Ex. 6), as well as a recent article entitled “A Review of the Strengths and Weaknesses of Various Models” (Ex. 7). In particular, Exhibit 7 provides a wealth of information related to the various models for CRBs and the respective strengths and weaknesses of each, as well as sample jurisdictions for each.

Based upon all of the foregoing, the following questions would likely need to be considered related a Milwaukee County CRB include, among many many others:

- What is the desired purpose (or model) of the CRB?
- Could the desired purpose of the CRB be accomplished given its scope of authority under current state law?
- Does any other agency or department serve the desired purpose of the CRB? If so, to what extent?
- What sort of budget for a County CRB is feasible? What kind of CRB is possible given that budget? Would that CRB fulfill the desired purpose?
- How many board members for the County’s CRB?
- Who appoints/confirms/elects? From what constituencies? For what term? What qualifications?
- From whom and how does the CRB receive complaints?
- What procedures and policies are required to ensure proper investigation and due process?
- What ethics rules should apply to CRB members and its staff?
- What open records law implications are there? What privacy rights, if any, attach to citizen complainants? Will the CRB receive and investigate anonymous complaints?
- What evidentiary threshold, if any, does the CRB require before commencing an investigation? Who makes that determination?
- Who makes final recommendations? What evidentiary threshold for final decision-making?
- What sorts of appeal procedures are available for citizens who disagree with an outcome? What standard of review for appeals?
- What does the CRB do when a complaint overlaps with investigations by other agencies and/or civil litigation?
- What possible issues could arise related to collective bargaining units?
- What frequency and in what format would the CRB receive public comment?
- What sort of reporting and communications would be required of the CRB?
- What size staff for the CRB would be appropriate? What budget is appropriate?
- Who appoints/hires/fires/confirms the Director of the CRB and its staff? What qualifications? How long does a Director serve and how is s/he removed?
