To: City Council and Independent Community Police Oversight Commission
From: Human Rights Commission
Date: June 15, 2020
Re: Collective Bargaining Agreement with Ann Arbor Police Officers Association

At the request of the chair of the Independent Community Police Oversight Commission (ICPOC) and because policing so directly impacts human rights, the Ann Arbor Human Rights Commission (HRC) reviewed the 2020-2022 Collective Bargaining Agreement (CBA) between the City of Ann Arbor and the Ann Arbor Police Officers Association (AAPOA) that is currently before Council. The HRC also considered the thoughts of a number of sources on the pending CBA, including an expert at the national ACLU and a local civil rights lawyer.

The HRC has concerns about several parts of the CBA. We lay them out below in the order they appear in the CBA.

But first, here are some of our general observations and suggestions about the CBA:

We note the conspicuous absence of any reference to ICPOC in the CBA. Also, ICPOC should have a seat on the City's negotiating team, or at least be consulted before and during negotiations with the police unions.

Now more than ever, the City has an opportunity and responsibility to think creatively about ways to reform the Ann Arbor Police Department. The CBA with the AAPOA presents such an opportunity. If the City is unable to renegotiate the substantive terms of the three-year AAPOA CBA that is on the table, we ask that the City seek to limit the CBA's duration to one year. The CBA would then end on December 31, 2020. Negotiations could begin immediately on a new three-year agreement, that would take effect on January 1, 2021, and could take place in a climate where the groundswell of support for change has made real change possible.

Article 5: Discipline and Discharge

- **Sec. 2:** *"If the Employee is unable to reply accurately, he/she will have the opportunity to review the appropriate written records before responding."*

  What "written records" would the officer be shown to help him/her reply accurately? We understand the need to provide the officer some documentation about accusations or complaints against him. And we are told that in practice an officer who is the subject of an investigation is not shown, for example, statements to investigators by others involved in the incident that could conceivably cause the officer to change his story to protect him or herself. But this language is unclear and should either be clarified or struck from the CBA.

- **Sec. 4:** *"These recommendations shall not be based on infractions which have occurred more than twenty-four (24) months prior to the incident currently under investigation."*

  It is problematic that sustained infractions from prior to two years before the incident at issue cannot be considered in disciplinary recommendations. Policing is not like other sorts of work where this kind of CBA provision is used. It is in the interest of the community for the supervisors of an officer with a history of misconduct, no matter when it occurred, to be able to consider that history in recommending appropriate discipline. It may in fact be that a pattern of misconduct is only visible when multiple years of substantiated infractions are considered. It may also be the case that it takes a new substantiated infraction to shed light on the validity of alleged infractions that were not able to be corroborated years earlier, so that those must now be given a closer look.

Article 6: Grievance Procedure

- **Sec. 3 (f):** *"If the Fourth Step answer is unsatisfactory to both the Association and the employee, the grievance may be submitted to a mutually agreeable arbitrator…[T]he decision of the arbitrator shall be binding on both parties."*

Note that this applies to disagreements about discipline of officers as well as policies and procedures. It must be the Police Chief and other City leaders (who answer to democratically elected and accountable officials), NOT unaccountable outside arbitrators, who determine how to discipline officers AND what policing in Ann Arbor should look like. To be "mutually agreeable" to both parties and so to keep their jobs, arbitrators are incentivized and statistically shown to side roughly half the time with unions and half the time with management.

A quick Google search turns up article after article from reputable sources with statistics and stories revealing the many cases where officers who should not have remained on the job were returned to work by arbitrators, and then continued to engage in egregious misconduct for which they believed they would not be held accountable. Arbitrators' decisions overturning the Police Chief's decisions to discipline officers (or reform policy and procedure) undermine his ability to ensure compliance with the highest standards. Arbitration presents an unacceptable obstacle to the Police Chief's ability to create and maintain the kind of policing that he, and the community he serves, want.

Article 8: Layoff and Recall

Would laying off those with least seniority result in a less diverse police force?

Article 14: Hours

- **Sec. 6:** *"Unless approved by a command officer, overtime assignments will not be offered if acceptance of the assignment would cause the officer to work more than sixteen (16) consecutive hours."*

  Is it wise to allow this much overtime? Excessive overtime, and the sleep deprivation it creates, can tend to both heighten existing biases and make officers more likely to make rash, dangerous decisions.

Article 26: General

- **Sec. 4:** *"In the event an employee is involved in a job-related citizen fatality, or other major trauma inducing event as determined by the Chief, such employee may be required to undergo medical and/or psychiatric care from a qualified doctor selected by the Employer…*

  a) Such employee will be assigned to non-street duty for a period not to exceed seven (7) days unless otherwise recommended by the medical doctor and/or psychiatrist involved and approved by the Chief or unless requested by the employee and approved by the Chief."

  It is unclear how or whether this provision would apply in the case of an officer whose conduct is under investigation because of his involvement in a citizen fatality, and has been relieved of duty as described in Article 5, Sec. 6.

- **Sec. 5:** "*The Employer shall not allow anyone, with the exception of the Chief, Deputy Chiefs, Chief's Management Assistant(s), Professional Standards Lieutenant and Sergeant, the City Administrator, City Human Resources Director, or Assistant City Administrator, the City Attorney, or Assistant City Attorneys to read, view, have a copy of, or in any way peruse a member's personnel file, which is kept by the Human Resources Department. This language does not prohibit the above individuals from making official reports regarding information contained therein. Any member may inspect his/her own file in the presence of the Chief or his/her designee, with the exception of the background investigation reports, anytime between 8:00 a.m. and 5:00 p.m., Monday through Friday upon request to Human Resources Department. Nothing in this section shall be construed to diminish the provisions of Bullard-Plawecki Employee Right-to-Know Act. Act No. 397 of the P.A. of 1978."*

  ICPOC must be added to the list of those with access to police officers' personnel files. Without such access, ICPOC cannot effectively perform its oversight function. The City ordinance creating ICPOC explicitly notes that ICPOC's access to information depends in part on whether the collective bargaining agreements allow it. The City must make sure they do.