

Independent Community Police Oversight Commission: The Task Force's Proposed Ordinance

Preamble

By granting the request of the community and ordering the formation of the Independent Community Police Oversight Commission, the City of Ann Arbor acknowledges that law enforcement officers, across the nation, have historically defended and enforced racism and segregation. For black Americans, policing is the most persistent element of the fight for civil rights because it has consistently been used a mechanism for racial control. Black people, and other people of color as well, already have a complicated and often tense relationship with law enforcement due to documented racial bias, disparities in police use of force, and the impacts of officer-involved shootings and other violent encounters with law enforcement officers.

The City of Ann Arbor also acknowledges that smart policing in our community is possible, but not until we are able to address our national history of using the police as a tool to reinforce systems of racial inequity. The formation of the Independent Community Police Oversight Commission is a necessary step in reframing the relationship that the residents of Ann Arbor have with the police and an investment in the smart, equitable, community-oriented policing that the Ann Arbor Police Department strives for and that our community deserves.

Article 1. Overview

§ 1.1. Name. This ordinance creates the Independent Community Police Oversight Commission, hereinafter referred to as “the Commission,” for the City of Ann Arbor.

§ 1.2. Mission. The Commission is created to serve the purposes of this ordinance, as follows:

- To improve and strengthen police-community relations, for civilian review of police complaints, identifying resources to support this Commission, and other issues related to policing in Ann Arbor.
- To ensure oversight so that the Ann Arbor Police Department (AAPD) provides appropriate civil service, with the goal that the entire community – meaning everyone who lives, works, studies in, or visits Ann Arbor – may live safely and experience fair and equitable treatment.
- To enable the community to have an effective, independent voice in recommending policies and practices that ensure a high quality of

police service, improves community/police relations, and influences selection of leadership for the AAPD.

- To provide a process for independent review of particular incidents, for the purpose of determining in each case what happened, and whether any changes in policies or practices are warranted.
- To work to ensure that the Ann Arbor Police Department (AAPD) treats all persons properly, fairly and respectfully, and without undue use of force – this concern being of special significance with respect to segments of the community that are vulnerable and have been marginalized, such as persons of color, immigrants, low-income people, those who suffer from mental illness, and transgender persons.
- To create environments allowing better communications, understanding, and relations between the AAPD and the community.

§ 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 it in performing its functions.

§ 1.4. Nature of the Commission. The responsibilities of the Commission being broader than those indicated for departmental boards under § 5.17(a) of the City Charter, the Commission shall be deemed to be a special commission authorized under § 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.

Article 2. Composition of the Commission

§ 2.1. Membership. The Commission shall consist of eleven voting members. One shall be a Youth Member, selected as described below in Art. 2.11. The other initial members shall be appointed by City Council exclusively from a list of 14 persons nominated through an application process conducted by the HRC, which shall make active outreach efforts to organizations representing diverse populations. All subsequent Commission members, other than the Youth Member, shall be appointed by City Council after all applications are collected by the Commission, in the process described below in Arts. 2.2 and 2.3.

§ 2.2. Recruitment Process. To recruit applications community-wide for initial membership on the Commission, the HRC will do publicity and outreach to organizations that represent diverse populations. The HRC, in conjunction with diverse representatives of the community, will plan multiple ways to inform the community about the Commission and the role and expectations of Commissioners and its advisors. An application form shall be posted online (and made available in multiple languages), and hard copies shall be made available in all places where the Commission's Complaint forms are made available, pursuant to Art. 3.1.2. Applicants may also choose to apply by interview, completed by HRC. Failure to apply shall not disqualify a person from being eligible for appointment. The Mayor, HRC, and community organizations shall solicit recommendations for nominations from the community. The Mayor, City Council, and the City Administrator will pass on to the HRC all the applications that they may receive.

At least three months before the expiration of the term of any Member of the Commission, the Commission shall initiate a community-wide effort to recruit new applicants. The Commission will state to the HRC, the Commission's network of community organizations, and City Council the skills it believes Commission members should ideally have, but such skills shall not be deemed requirements for membership. All applications will be collected by the Commission, reviewed by HRC and the Commission, who consolidate a slate of nominations, which is then submitted to City Council.

§ 2.3. Diversity of Membership. The HRC, community organizations, and City Council shall endeavor to ensure that (a) the overall membership of the Commission reflects the City's diverse population, including income level, race, ethnicity, age, gender, sexual orientation and experience, (b) segments of the community that are vulnerable and have been marginalized, and that tend to have significant negative interactions with the police, are amply represented, and (c) the Commission includes members with a variety of skills, expertises, and life experiences bearing on the work of the Commission, such as people who work or have worked in the fields of mediation, conflict resolution, mental health, housing, homelessness, anti-racist and equity reform, and transformative justice, and people who have had significant encounters with the police and the criminal justice system.

§ 2.4. Terms. The first set of Commission members (apart from the Youth Member) shall be divided into three classes, three to be selected for terms expiring May 31, 2020, three for terms expiring May 31, 2021, and four for terms expiring May 31, 2022. Thereafter, members shall be appointed for three-year terms.

§ 2.5. Term Limit. No person shall serve on the Commission for more than six 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 the seat shall be deemed vacant when the person shall have completed six years of service within the previous nine years.

§ 2.6. Other Eligibility Requirements. Subject to Art. § 2.5 of this ordinance and Sec. 12.2(b) of the City Charter, any resident of Washtenaw County who is not a current or former employee of, or regular contractor with, the City or any police department shall be eligible to be a member of the Commission. Adoption of this ordinance by seven members of the City Council shall be deemed to be a waiver for purposes of Sec. 12.2(b) of the City Charter.

§ 2.7. City Council Liaisons. The City Council will designate two of its members to serve as liaisons to the Commission. They will sit with the Commission as non-voting members but otherwise will participate fully in meetings of the full Commission.

§ 2.8. Officers. The Commission shall have a Chair, a Vice-Chair, and a Youth Liaison. It may also create additional offices. The Commission shall choose each officer from among its members who have indicated willingness to serve in that office. If no member receives a majority of the votes, then there shall be another ballot, with the name of the member receiving the fewest votes deleted; if more than one member is tied for fewest votes, then the one whose name will be deleted shall be selected by lot. Balloting shall continue until one member receives a majority of the votes. If two or more offices are vacant at the same time, the Commission shall determine the order in which the selections shall be made, provided that the Chair shall be selected before any other officer. The Commission may choose to conduct balloting by electronic means. If permitted by law, all voting for officers shall be by secret ballot.

The terms of each office shall be one year, and any member of the Commission shall be eligible to serve as an officer as long as the member is on the Commission. A member whose eligibility to be on the Commission will expire before the end of the term may nevertheless be elected as an officer, in which case the office shall be deemed vacant when the member is no longer eligible to serve on the Commission.

If any office becomes vacant before the end of the term, the Commission shall as promptly as reasonably possible elect a member to complete the term of the office, provided that the Commission may in its discretion decide not to do so if the vacancy occurs less than two months before the end of the term.

The Chair shall preside at the meetings of the Commission. The Vice Chair shall preside in the absence of the Chair. If the office of Chair becomes

vacant before the end of the term, the Vice Chair will serve as Chair until a new Chair is chosen or until the end of the term, whichever comes first.

§ 2.9. Suspension and Removal. The Commission may suspend or remove a Commission member for good cause shown upon seven members voting to suspend or remove, after mediation and restorative processes have been attempted. The Commission shall adopt such procedures that will afford the charged party with adequate notice and description of good cause so that the charged party may answer those charges.

§ 2.10. Filling Vacancies. If a seat on the commission becomes vacant, it shall be filled in accordance with Sec. 12.14(b) of the City Charter.

§ 2.11. Youth Council. The Commission shall convene or utilize an existing Youth Council, composed of youths residing in Washtenaw County between the ages of 16 and 21 years old, inclusive. The Commission shall create basic rules for the organization and operation of the Youth Council, and it may allow the Youth Council to supplement those rules. The Commission shall make broad-based outreach efforts with particular efforts to secure the participation on the Youth Council of youths from marginalized communities and vulnerable communities, and youths who have had significant encounters with the police. The Youth Liaison will assist in the organization and operation of the Youth Council, and will facilitate communications between the Commission and the Youth Council. The Youth Council shall designate one of its members to serve as a Member of the Commission, for a one-year term, which may be renewed as many as two times, so long as the Youth Commission Member remains eligible to serve in that position. The Youth Council may also designate one or more of its members to serve as alternates, eligible to vote in place of the Youth Commission Member, in case the Youth Commission Member is unable to participate in any meeting of the Commission or of a committee of which the Youth Commission Member is a part. The Commission may in its discretion award a stipend to members of the Youth Council for their services and provide resources for necessary expenses.

§ 2.12. Other Councils. The Commission shall convene Advisory Councils such as a Council of Elders of other demographic groups if doing so will assist the Commission in advancing its mission. The Commission shall create basic rules for the organization and operation of such Councils, and it may allow the Councils to supplement those rules. The members of such Councils might be those persons who can offer to the Commission experiences with the police that are unknown or unfamiliar to the Commission members and whose perspectives and voices will help the Commission do a comprehensive job of evaluating the policies and practices of the police.

Article 3. Responsibilities and Powers

§ 3.1 Incident Review.

§ 3.1.1. General. An important function of the Commission is to review the actions of the AAPD in and with respect to individual incidents. This function extends both to the officers involved in the incident and to those who examine it for disciplinary or other purposes. For simplicity, this § 3.1 refers to a Complaint as a request for incident review, and the Complainant as a person who files a Complaint, because most often the power of reviewing incidents will be invoked when there has been a complaint about police conduct. That will not always be so, however. For example, the Commission can examine incidents on its own initiative; a member of the public may call a particular incident to the attention of the Commission with questions or even a commendation and not a complaint; a police officer may call an incident to the Commission's attention because the officer believes consideration of the incident will advance the public good. Commission review of incidents is important for at least four reasons. First, when the facts are disputed, such review provides a finding, without need for litigation, by a body functionally independent of the AAPD and City administration of what happened. Second, whether or not the facts are disputed, such review allows the Commission to evaluate what happened, expressing its view as to whether the actions of the officers involved in the incident and of those who examined it were appropriate and justified. Third, such review enables the AAPD and City administration to understand better reasons for community concern, and it enables members of the community – both those involved in the incident and others as well – to understand not only what the police did but also what basis in policy or practice they may have had for doing so. Finally, such review allows the Commission to determine, whenever it concludes that the AAPD's actions were not optimal, how they may be improved in the future and accordingly to make recommendations for policy change.

§ 3.1.2. Initiation of Review. Any person, whether or not involved in the incident in question and without respect to citizenship or residence, may file a Complaint, and may do so in any manner, orally or in writing. The Commission shall not inquire about any Complainant's immigration status or legal identity. The Commission shall facilitate initiation of review by providing an email address, a website, a telephone number, and a mailing address for initiation of review. It shall post on an easily accessible website a simple Complaint form that may be completed online or printed out and mailed to the Commission. A provision will be made for persons who are visually impaired, or in any other way handicapped in their ability to pursue a Complaint, and for limited and non-English speakers. Paper copies of the complaint form shall also be available on request at the City Clerk's Office, and at each office of the AAPD. The Commission shall consider maintaining at City Hall a kiosk with paper copies of the form and a computer for purposes of filing Complaints. City officers or employees receiving a Complaint shall forward it promptly to the Commission, but the Complainant may in any event choose to send it to the Commission personally. All officers and other employees of the AAPD shall be responsible for being informed about the Complaint process and shall be responsible for providing complete and accurate information to any person who asks about how to file a Complaint. City employees shall be instructed that they must not discourage any person from filing a Complaint. The Commission shall also seek to make copies of the Complaint form available at each branch of the Ann Arbor District Library and at community centers around the City and at other locations identified as convenient by the community. The form shall be offered only for convenience, and shall not be required to file a Complaint. The Commission itself may also initiate review of an incident.

§ 3.1.3. Procedural Choices in Filing of Complaint. The Commission shall maintain contact with the Complainant throughout the review process, informing the Complainant as to progress and explaining options on how to proceed and the implications of every option in a process of continuous informed consent. The complainant may be assisted throughout the review process by an Advocate, who may be a person chosen by the Complainant or a professionally trained person retained by the Commission.

When review of an incident is initiated by the filing of a Complaint, the Complainant shall have the following procedural choices:

- A. *Choice as to Anonymity.* The Complainant may choose to file the Complaint anonymously or not. If the Complainant files the Complaint anonymously, the Commission shall proceed to act on the Complaint without attempting to determine the identity of the Complainant, and it shall attempt to communicate with the

Complainant only if it can be sure of doing so without learning the Complainant's identity. If the Complaint is made without revealing the identity of the Complainant, the Commission shall presume that it is made anonymously.

- B. *Choices as to Disclosure of the Complaint.* The Complainant shall choose whether the Complaint shall be disclosed to the AAPD, and, if the Complainant decides in the affirmative, whether the Complaint shall also be disclosed to the public. In essence, the Complainant shall answer these questions: *“Do you want the police to know about this Complaint? Do you want the public to know about it?”*

If the Complainant decides that the Complaint shall not be disclosed to the AAPD, or shall be disclosed to the AAPD but not to the public, the Complainant shall be referred to as *under seal*. The Commission and its agents and (in the case of a Complaint disclosed to the City) the City and its agents shall take care, to the extent permitted by law, to ensure a Complaint filed under seal shall not be disclosed contrary to the Complainant's decision; provided that in the report provided for in Article 3.2.3.2, the Commission shall state the number of Complaints so filed in the past reporting period. If the Complainant decides that the Complaint shall not be disclosed to the AAPD, the Commission shall nevertheless investigate the matter to the extent it can do so without making such disclosure (such as by gathering information from the Complainant, from willing third parties, and from publicly available sources), and (as in other cases) shall be able to use any information it learns in making policy recommendations, and may advise the Complainant as to other steps the Complainant may take.

- C. *Choices as to Disclosure of Identity.* If the Complaint is not filed anonymously and the Complainant decides that the Complaint shall be disclosed to the AAPD, the Complainant shall choose whether the Complainant's identity shall also be disclosed to the AAPD. If the Complainant decides in the affirmative, and the Complainant has also decided that the Complaint shall be disclosed to the public, the Complainant shall choose whether the Complainant's identity shall also be disclosed to the public. In essence, the Complainant shall answer these questions: *“Do you want the police to know that you are the person who filed this Complaint? Do you want the public to know that?”*

If the Complainant decides that the Complainant's identity shall be disclosed to the public, the Complaint shall be referred to

as *open*. If the Complaint is filed openly, the Complainant will have the option of appearing before the Commission, or the members or Committee designated to act on the Complaint, at a public session, and the Commission shall make no attempt to conceal the identity of the Complainant. If the Complainant decides that the Complainant's identity shall not be disclosed to the AAPD, or that it shall be disclosed to the AAPD but not to the public, then the Complaint shall be referred to as *confidential*. If a Complaint is filed confidentially, the Complainant will have the option of appearing before the Commission, or the members or Committee designated to act on the Complaint, at a closed session, and the Commission and (in the case in which identity has been disclosed to the AAPD) the City, and the agents of both, shall take care, to the extent permitted by law, not to disclose contrary to the Complainant's decision the identity of the Complainant or information that would facilitate discovery of the identity of the Complainant. Until such time as the Complainant clearly indicates intention to file the Complaint openly, the Commission shall presume that a Complaint is filed confidentially, with intent that the Complainant's identity not be revealed to the AAPD.

The Complaint form made available pursuant to § 3.1.2 shall ask only for a choice as to anonymity and shall assure the Complainant that, before any action is taken on the Complaint, the Complainant will (if the Complaint is not anonymous) have an opportunity to discuss choices as to how to proceed with a member or representative of the Commission and that until then the Complainant's identity shall be treated as anonymous.

However a Complaint is filed, a member or representative of the Commission shall attempt promptly to communicate with the Complainant (taking care, in case of a Complaint filed anonymously, not to determine the identity of the Complainant) to acknowledge receipt of the Complaint, explain the Complainant's options and procedural consequences, and ascertain the Complainant's choices.

A Complainant who decides at one time that a given disclosure shall not be made may decide at a later time that the disclosure shall be made.

The Commission shall develop a system for classifying Complaints by the type of misconduct alleged, and in the report provided for in Article 3.2.3.2, the Commission shall state the number of Complaints filed in the past reporting period alleging each type of misconduct.

§ 3.1.4. Time for Initiation of Review. There is no time limit for filing a Complaint or for initiation of review of an incident. The Commission will exercise appropriate caution in trying to determine the facts of an incident that is no longer recent, but it shall act on the recognition that no matter how old an incident is it may hold lessons for the future.

§ 3.1.5. Referral of Matter to Police Chief. If the Complainant decides that the Complaint should be disclosed to the AAPD, the Commission shall promptly refer the matter to the Police Chief for a report, and if the Commission decides on its own initiative to review an incident, it may make such a referral provided that, to the extent the Complaint or inquiry concerns conduct of the Police Chief, the matter shall be referred to the City Administrator. (References to the Police Chief in this § 3.1 shall apply to the City Administrator instead when a matter is referred to the City Administrator.)

§ 3.1.6. Protection Against Retaliation and Intimidation. Retaliation, actual or threatened, or any form of intimidation against any Complainant, witness, or other person involved in the incident review process, or conduct that could reasonably be perceived as retaliatory, threatening, or intimidating, (a) is expressly prohibited as a matter of City policy, (b) shall be regarded as a separate and distinct incident, regardless of any action taken with respect to the underlying incident, and (c) shall result in discipline, up to and including termination of employment. When the AAPD informs an officer of a Complaint as part of the disciplinary process, the AAPD shall reference these provisions. In addition, when a Complainant appears to fear the possibility of retaliation or intimidation, the Commission shall (assuming it is not obligated as a matter of law or for protection of the public to make a prompt report), discuss with the Complainant and the Complainant's Advocate, if the Complainant has one, the following possibilities, and shall proceed in the manner chosen by the Complainant:

(A) Proceeding with the Complaint kept under seal, pursuant to § 3.1.3(B), and not informing the AAPD about the Complaint or the Commission's interest in the matter.

(B) Without transmitting the Complaint to the Police Chief, requesting information and materials from the Police Chief about the incident. The AAPD shall not treat such a request as a complaint triggering the disciplinary process, but shall instead respond to it in the manner in which it responds to requests under the Freedom of Information Act (FOIA); provided that no fee shall be imposed for producing such information and materials.

(C) Referring the Complaint to the Police Chief, pursuant to § 3.1.5; provided that if, pursuant to § 3.1.3(C), the identity of the

Complainant is not disclosed to the AAPD, the AAPD shall treat the Complaint in the same manner as it treats complaints that it receives anonymously.

In addition, with respect to a Complaint filed with the Commission (and not one filed directly with the AAPD), if the AAPD, whether through the Commission or another source, becomes aware of the nature of the Complaint and/or the Complainant's identity, AAPD shall not seek out, question, speak with, or otherwise attempt to investigate or contact the Complainant without first approaching the Commission and obtaining the Complainant's explicit, uncoerced consent.

§ 3.1.7. Report by Police Chief. If the Commission refers a matter to the Police Chief for report the Police Chief will report to the Commission in writing, stating the Police Chief's determinations as to: (a) the facts of the incident; (b) whether there was any inappropriate conduct by the police; (c) any discipline that has been or will be imposed; and (d) any changes in policies or procedures that ought to be made as a result of the incident. Except to the extent prohibited by federal or state law, the City Charter, or a collective bargaining agreement, the report shall include all documents related to the incident (including statements by the officers involved), all video evidence, and descriptions of any tangible evidence; provided that, if the Police Chief believes that some information or materials related to the incident cannot be produced because of law or collective bargaining agreement, the Police Chief shall describe the information and materials withheld and state with particularity the reason why they cannot be produced. Documents and other materials shall be redacted only to the extent necessary; where possible, dummy names (such as "Victim" or "Officer A") shall be used rather than blacking out portions of a document.

§ 3.1.8. Timing of Report; Interim Report. The Police Chief shall make the report required by § 3.1.6 within 30 days of receiving the referral under § 3.1.5, provided that (a) if ongoing disciplinary or criminal proceedings or investigations preclude the Police Chief from making the report in that time, then the Police Chief shall make the report within 14 days after conclusion of those proceedings, and (b) in extenuating circumstances, explained in writing by the Police Chief, these time limits may be extended, but only for a reasonable time. At any time, the Police Chief may make an interim report, and the Police Chief shall do so if unable to make a final report within 45 days of the referral.

§ 3.1.9. Further Information and Discussion. At any time, before or after the Police Chief makes the report required by § 3.1.6, (a) if the Commission has information that it believes is material to consideration of the incident, it may pass that information on to the Police Chief, and (b) if the Commission believes that further information will be material to consideration of the incident, it will ask the Police Chief to present that information, and if the information is in the possession of the AAPD, or could be secured by the AAPD by reasonable efforts, the Police Chief will include that information in the report required by § 3.1.7 or in a supplemental report. After making the report required by § 3.1.7, the Police Chief shall, if either the Police Chief or the Commission wishes, discuss the report in person with the Commission

§ 3.1.10. Confidential Production; Disputes Concerning Production. When production of information and materials is required by this ordinance, the production shall be made in confidence only if that is necessary by reason of law, collective bargaining agreement, or overriding public policy. (Public-policy considerations shall not in themselves excuse production of the materials and information, but may justify the production being made in confidence.) Any disputes concerning the production of information and materials may be resolved pursuant to § 4.10.

§ 3.1.11. Information Gathering by the Commission.

§ 3.1.11.1. Opportunity to Meet with the Commission. The Commission will give any person (including the Complainant, assuming the Complaint has not been filed anonymously, and any police officers involved in the incident) who has information bearing on the incident an opportunity to provide that information in person in a meeting with the Commission or members or representatives. This meeting will be open or confidential, as the person wishes, except that when a Complaint is filed under seal any meetings relating to it shall be closed. The Commission shall be sensitive to the needs of the Complainant as to when the Complainant shall have the opportunity of having this meeting.

§ 3.1.11.2. Questioning of Officer. Ordinarily, given the report required by § 3.1.7 and opportunities for follow-up, the Commission should not need to meet with the officer or officers involved in the incident. If, however, the Commission believes that, because of the unusual nature of the case, it is essential for it to question an involved officer about the incident, and the officer does not appear before the Commission voluntarily, the Police Chief shall instruct the officer to appear, to make a statement, and to answer questions. In such a case, the officer shall retain all rights, including the right under *Garrity v. New Jersey*, 385 U.S. 493 (1967) (protecting the officer against use of the officer's statement in a criminal case against the officer) and the right under *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975) (allowing the officer to be accompanied by a union representative), and if the officer is represented by counsel, then counsel may accompany the officer.

§ 3.1.11.3. Commission Requests to Third Persons; Investigators. If the Commission believes that third persons, such as bystanders, have information material to its review, the Commission may request that such persons provide that information. If the Commission deems it appropriate, it may use the services of an investigator in conducting its review.

§ 3.1.11.4 Information Managers. Notwithstanding any other provision of City law, the Commission shall have access to and be authorized to examine and copy, without payment of a fee, any AAPD information and records, including confidential and legally privileged information and records so long as privilege is not waived as to third parties, and police databases, subject to any applicable state or federal laws. Two or more Commission members, designated as Information Managers, shall be formed to enact this policy. The Information Managers shall not disclose confidential or legally privileged information or records and shall be subject to the same penalties as the legal custodian of the information or records for any unlawful or unauthorized disclosure. The Information Managers and the Police Chief, City Attorney, City Administrator, IT managers, and others will be engaged as necessary to set up a process that offers a secure way for records to be accessed.

§ 3.1.12. Voluntary Sessions. If the Commission believes it might be useful, it may facilitate sessions in which persons involved in the incident and others with an interest in it (including representatives of the AAPD) can participate on a voluntary basis, the aim being to achieve fuller mutual understanding without recrimination.

§ 3.1.13. Incident Reports by the Commission.

§ 3.1.13.1. Issuance of Reports. When the Commission has completed its review of an incident, it shall issue a report to the Police Chief, the City Administrator, the City Attorney, and any other city officer it deems appropriate. Except in cases filed anonymously, the Commission shall also issue its report to the Complainant, and except in cases filed under seal it shall issue its report to the public. The Commission may also issue an interim report at any time if it deems that appropriate. The Commission shall not, however, issue any report to the Complainant or to the public before completion of any disciplinary proceedings with respect to the incident.

§ 3.1.13.2. Contents of Report. The Commission's final report with respect to an incident shall state its determinations as to: (a) the facts of the incident; (b) whether there was any inappropriate conduct by the police; (c) what the response of the AAPD and, if appropriate, of the City, should be or should have been; and (d) any changes in policies or procedures that ought to be made as a result of the incident.

§ 3.1.13.3. Confidential Information. The Commission shall take care not to disclose confidential information (including, where applicable, the name of the Complainant) in a report. The Commission's reports should ordinarily avoid identifying police officers by name.

§ 3.1.13.4. Response to Report. If the Commission's final report recommends action by the Police Chief, the City Administrator, the City Attorney, or any other City officer, that person or entity ("the responding officer") shall respond to the Commission in writing within 30 days, stating with particularity (a) the extent to which the responding officer accepts the recommendations, (b) the actions, if any, that the responding officer has taken or will take in acting on the recommendations, and (c) to the extent that the responding officer does not accept the recommendations, the reasons why.

§ 3.1.13.5. Discussion of Report. If the Complainant wishes, the Commission shall afford the Complainant an opportunity to discuss the report with the Commission or with members of the Commission, in an open meeting if the Complainant wishes, within 30 days of the time the report is issued to the Complainant. If either the Commission or a responding officer wishes, the Commission shall discuss the report and the responding officer's response to it with the responding officer; such a meeting shall be held openly unless the Complaint was filed under seal or the preservation of the confidentiality of information requires that the meeting be closed. After the meetings called for in this § 3.1.13.5, the Commission may, if it deems it appropriate, issue a supplemental report.

§ 3.2. Reports and Recommendations Concerning Policies, Practices, and Compliance.

§ 3.2.1. General. For purpose of this § 3.2, the term "police-related policy" means any policy or practice of the AAPD, and any other policy or practice of the City or any of its agencies to the extent that it governs, or otherwise bears on the work of, the AAPD. The Commission is charged with the responsibilities of examining and assessing, according to such priorities as it may determine, all police-related policies and the degree of compliance with them, and of making reports with recommendations for improvements, including new policies as well as revisions to existing ones. Such reports and recommendations may concern, without limitation,

- A. Recruitment, hiring, promotion, and union relations;
- B. Training (including both initial training of new personnel and retraining) and education of police personnel, including without limitation on matters such as de-escalation, implicit bias, multicultural respect, and the use of force;
- C. Procedures for handling complaints and determining discipline;
- D. Public education, communications, and outreach efforts by the AAPD;
- E. Non-law enforcement approaches that may reduce the demand and need for police interventions;
- F. Mental health crises;
- G. Use-of-force policy;
- H. Arrest procedures;
- I. Data collection and usages;
- J. Surveillance;
- K. Response to protests;
- L. Budget needs and allocation; and
- M. Strategic planning.

§ 3.2.2. Access to Information and Materials.

§ 3.2.2.1. General. To enable the Commission to perform its functions under this § 3.2, it is critical that the Commission have broad access to relevant information and materials – which, as used in this ordinance, means information and materials that state or reflect policies or practices of the AAPD, and any other policies and practices of the City and any of its agencies to the extent that they govern, or otherwise bear on the work of, the AAPD.

§ 3.2.2.2. On Request by the Commission. The AAPD, the City Administrator, and the City Attorney’s Office, as the case may be (“the producing officer”), shall, except to the extent prohibited by federal or state law, the City Charter, or a collective bargaining agreement, provide the Commission with all relevant information and materials that the Commission requests. If the producing officer believes that some requested information or materials, though relevant, cannot be produced because of law or collective bargaining agreement, the producing officer shall describe the information and materials withheld and state with particularity the reason why it cannot be produced.

§ 3.2.2.3. Without Need for Request. At least every three months, the AAPD shall report to the Commission (a) describing any significant developments bearing on the AAPD’s performance of its functions, including any significant changes in policies or procedures (including without limitation in training or discipline), staffing, or budgetary needs, (b) describing any complaints lodged with the AAPD, including the substance of the complaint and the process and substance of the AAPD’s response to it, and (c) providing data on field operations, including without limitation, and in each case broken out by race, the number of (i) officer-involved shootings, (ii) taser discharges, (iii) street stops, broken out by type, (iv) vehicle searches, (v) contraband finds, (vi) response to mental health crises, and (vii) trespass.

§ 3.2.2.4. Confidential Production. The provisions of § 3.1.10, with respect to confidential production of information, shall apply to production of information under this § 3.2.

§ 3.2.3. Issuance of Reports.

§ 3.2.3.1. Special Reports. The Commission shall issue a special report at any time it deems appropriate concerning any police-related policy or practice. Such a report may assess the degree of compliance with any policy or practice, and it may make recommendations for improvements. Such recommendations shall be addressed, as appropriate, to the AAPD, the City Administrator, the City Attorney, the head of any City agency, or the City Council.

§ 3.2.3.2. Annual Report. The Commission shall issue an Annual Report. This Report shall (A) summarize the Commission's activities over the past year, (B) state aggregate data on the number and types of Complaints received, the geographic areas where Complaint incidents occurred, (C) state, to the extent known, aggregate demographic data on Complainants, (D) summarize recommendations made by the Commission and responses by the City and officials, including the extent to which the recommendations were accepted and implemented to its reports, (E) summarize the Commission's requests for information and the responses to such requests by the City and officials, and (F) its plans for the following year. The Annual Report may also make recommendations for improvements in police-related policies and compliance. If the Commission believes that amendments to this ordinance would help make it more effective, it shall make appropriate recommendations. During its first two years, the Commission shall also issue a Mid-Year Report, stating the same information, for the reporting period, as prescribed above for Annual Reports.

§ 3.2.3.3. Public Reports; Confidentiality. Reports shall ordinarily be issued to the public, but the Commission shall take care not to make public release of information that should remain confidential by reason of law, collective bargaining agreement, or overriding public policy, or that has been provided to the Commission in confidence by a member of the public.

§ 3.2.4. Response to Recommendations. If a report issued under this § 3.2 makes recommendations to the AAPD, the City Administrator, the City Attorney, or the head of any City agency, that person or entity (“the responding officer”) shall respond to the Commission in writing within 30 days, stating with particularity (a) the extent to which the responding officer accepts the recommendations, (b) the actions, if any, that the responding officer has taken or will take in acting on the recommendations, and (c) to the extent that the responding officer does not accept the recommendations, the reasons why. If either the Commission or the responding officer desires, the responding officer shall also discuss the matter with the Commission in person. Except to the extent necessary to protect confidential information, the response and discussion provided for in this § 3.2.4 shall be public, with full access and transparency for the broader community.

§ 3.3. COMMUNITY RELATIONS.

§ 3.3.1 Building Community Relations. For the AAPD to be able to perform its vital function in a way that is both effective and equitable to all segments of the community, especially those segments of the community that are vulnerable and marginalized, it is crucial that there be increased understanding of the needs of those particular community groups by the AAPD. The Commission shall be proactive in discharging its responsibilities of fostering better communications and understanding, and of ensuring that its complaint procedure is known to the community as open and accessible to the public. The Commission may take any action not prohibited by law that, in its discretion, it believes will help it do so. Such actions may include, without limitation, conducting meetings in any format (including listening sessions, discussion circles, and educational sessions) with community groups and with the community at large, with or without police participation, based on the preferences of each community group. In conducting these actions, the Commission

- A. shall convene and utilize an advisory group with broad representation of the aforementioned community groups, including but not limited to youth of color; adults of color, particularly black men; persons living with mental illness; formerly incarcerated persons; persons who have had adverse interactions with the AAPD; persons living with persistent economic hardship; transgendered persons; and persons with immigrant status;
- B. shall consider whether information that it learns from these actions suggests that it should make any recommendations, pursuant to § 3.2 of this ordinance, as to changes in practices and policies bearing on the City’s exercise of the policing function;

- C. shall, through the Youth Liaison, work with the Youth Commission Member and Youth Council to incorporate a youth perspective into the Commission's decisions and recommendations, organize events that are youth-oriented, and secure the participation of youth in other events as appropriate;
- D. may coordinate with other Councils that the Commission convenes to organize events oriented to the groups that such Councils represent; and
- E. may secure such professional and expert assistance as it deems appropriate. Such assistance may be secured from professionals and existing organizations and within the Ann Arbor community or from other persons and organizations, as the Commission deems best.

§ 3.4. Consultation on Leadership. When there is a vacancy in the position of Police Chief, the City Administrator shall, early in the process of recruiting a new Chief, consult with, and seek advice and recommendations from, the Commission, as to both the procedures to be used and the criteria for a choice, and the Commission shall organize public sessions to discuss needs for the position. Finalists for the position shall meet with the Commission or its members and with the public; provided that, so long as the fact of the candidacy is confidential, the meeting with the Commission or its members shall be closed and no public meeting shall be held. The City Administrator shall consult with the Commission before making a recommendation to the City Council. The Commission may state to the City Council whether or not it agrees with the recommendation, and give reasons why. The City Administrator may choose to use a similar procedure in hiring other senior leadership of the AAPD. In light of the City Administrator's supervisory role over the Police Chief and therefore over the AAPD, the City Council shall also consult with the Commission in selection of the City Administrator.

Article 4. Operations and Support

§ 4.1. Committees and Assignments. The Commission may create committees, and it may assign functions to committees, or to one or more individual members, as it deems appropriate; provided that any report issued by the Commission shall be approved by the Commission as a whole. At all times, a committee, or at least one member of the Commission and an alternate, shall be assigned to monitor newly filed Complaints, and acknowledge receipt to the Complainant where possible, so that a member of the Commission can ensure that an attempt to communicate promptly with the Complainant (except in the case of a Complaint filed anonymously) is made, as provided in § 3.1.3.

§ 4.2. Meetings. The Commission shall meet at least five times every six months. Meetings shall be held openly except to the extent necessary to preserve the confidentiality of information, or when a Complaint filed under seal is being discussed.

§ 4.3. Facilities and Staff Support. The City shall provide the Commission with suitable facilities for the conduct of its meetings and other business. The City shall also provide the Commission with the services of an administrative liaison to assist with logistical matters, such as posting the schedule of meetings and ensuring that they are properly recorded. The Commission may secure the services of such additional personnel for assistance as, in its discretion, it deems appropriate. Such personnel may include, without limitation (in addition to counsel, as provided in § 4.4), one or more of the following: additional logistical support staff, a researcher, an investigator, consultants, and meeting facilitators. The City Administrator or a designee shall ensure that such contracts are properly entered into, in compliance with the Charter and City hiring and procurement policies, and maintained (with respect to such matters as payment, tax withholding and reporting, and record-keeping for freedom-of-information purposes), but neither the City Administrator nor any other City officer shall, participate or attempt to limit the choice of, or attempt to exercise supervisory control over, such personnel.

§ 4.4. Counsel. 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.

§ 4.5. Funding and Budget. The Commission shall prepare an annual budget for its operations and submit a work plan to the City. Unless the Commission requests less, the City shall appropriate each year, for the use of the Commission, no less than 1.17% of the amount appropriated in that year for the AAPD. Any unexpended funds shall be held in reserve for the use of the Commission.

§ 4.6. Training and Orientation Programs. Each new member shall be required to engage in training on topics as the Commission may prescribe such as implicit bias, trauma-informed care, history of policing, multicultural respect, and power analysis, delivered by experts, totaling no less than six hours within the first six months of the member's tenure. Additionally, members shall be exposed to orientation programming, on topics such as AAPD policies and procedures, restorative practices, and social service resources, as the Commission may prescribe on a continual basis.

§ 4.7. Additional Procedures and Rules of Operation. As provided in Title I, ch. 8, § 1.171(4) of the City Code, the Commission shall have the power to make rules and regulations concerning the administration of its affairs as shall not be inconsistent with laws, the City Charter, or the City Code – including, as examples, rules on the conduct of the Commission’s meetings, governing whether remote electronic participation shall be allowed, and the maintenance by the Commission of its own means of communication, such as a website and Facebook page.

§ 4.8. Confidentiality Statement. Each member of the Commission, and every person who renders services to the Commission, shall sign a statement, on a form prescribed by the Commission, promising to maintain and protect the status of confidential information.

§ 4.9. Relation to Other City Law. To the extent that this ordinance conflicts with any City law of any type (including, without limitation, any ordinance, rule, regulation, or executive order) other than the City Charter, this ordinance shall prevail.

§ 4.10. Dispute Resolution. If the Commission and an officer or agency of the City disagree about the meaning or implementation of this ordinance, they shall have at their disposal, but shall not be limited to, the following tools, to be used at their discretion.

§ 4.10.1. Mediation and Arbitration. The City Administrator, on behalf of the City, and the Commission shall agree on the selection of a single Arbitrator, who shall serve for a one-year term, which may be renewed by mutual agreement. On the request of either party, the Arbitrator shall make a prompt attempt to resolve the matter by mediation. If at any time either party determines that the discussions have reached an impasse, they may call for arbitration. Upon a call for arbitration, the Arbitrator shall resolve the dispute as promptly as reasonably possible. The Uniform Arbitration Act, Act 371 of 2012, shall be deemed to apply to arbitrations held under this provision as if this provision were an agreement to arbitrate. Except to the extent necessary to protect confidential information, any hearing that is part of the arbitration process shall be open to the public.

§ 4.10.2. Subpoena. If the dispute concerns the failure of an officer or agent of the City to (a) produce documents or other materials, or (b) appear before or make a statement to the Commission or its representatives, the Commission may issue a subpoena to compel the production, appearance, or statement. This power is in addition to subpoena powers provided by the Uniform Arbitration Act; provided that, if the Commission issues such a subpoena, then no arbitration shall be held.