

ORDINANCE NO. ORD-21-21

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ORGANIZATION OF BOARDS AND COMMISSIONS

An Ordinance to Amend Chapter 8 (Organization of Boards and Commissions), Sections 1:214 and 1:215, Title I of the Code of the City of Ann Arbor To Amend Commission Appointment Process, Add Exceptions to Allow Earlier Review of Incidents in Limited Cases, and Increase Number of Information Managers

The City of Ann Arbor Ordains:

Section 1. That Section 1:214 of Chapter 8 of Title I of the Code of the City of Ann Arbor be amended to read as follows:

1:214. - Same—Composition of the Commission.

- (1) *Membership.* The Commission (ICPOC) shall consist of 11 voting members, 1 of which shall be a youth member. Commissioners shall, ~~to~~ be appointed by ~~4 or more of~~ the City Council liaisons to the Human Rights Commission ~~or~~ and liaisons to the Commission, with the approval of the City Council. In making appointments of members to the Commission, City Council liaisons to the Human Rights Commission and the Commission shall appoint persons who have the recommendation of the Commission and, insofar as possible, represent the City's diverse population—especially those who tend to have significant negative interactions with the police and are committed to improving police and community relations. Persons who are current employees of the City or who have been employed by the City, including active or former police officers, within 5 years of nomination shall not be eligible for appointment. The requirements in the preceding sentence may be waived by a resolution approved by at least 7 members of City Council for current and former employees who are or were classified as temporary employees and who received fewer than 7 pay checks in any year from the City.
- (2) *Initial recruitment process.* To recruit applications community-wide for initial membership on the Commission, the Ann Arbor Human Rights Commission will do publicity and outreach to organizations that represent diverse populations. The Human Rights Commission, 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 Commission members and its advisors. An application form shall be posted online and hard copies shall be made available in City Hall. Translation services shall be made available to applicants as necessary. Applicants may also choose to apply by interview completed by Human Rights Commission. Failure to apply shall not disqualify a person from being eligible for

appointment. The Mayor, City, and other community organizations may also solicit recommendations for nominations from the community.

- (3) *Diversity of membership.* The Commission, 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, expertise, 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 experience with the police, law enforcement, and the criminal justice system.
- (4) *Terms.* Terms for voting members shall be 3 years, other than any youth member whose term shall be 1 year. Terms shall be staggered so that approximately  $\frac{1}{3}$  of the voting members' terms expire each year.
- (5) *Term limit.* No person serving on the Commission continuously for 6 years shall be eligible for reappointment, until the lapse of 3 years.
- (6) *City Council liaisons.* The City Council will designate 2 of its members to serve as liaisons to the Commission. They will sit with the Commission as nonvoting members but otherwise may participate fully in meetings of the Commission.
- (7) *Filling vacancies.* If a seat on the Commission becomes vacant, it shall be filled in accordance with Section 12.14(b) of the City Charter.

Section 2. That Section 1:215 of Chapter 8 of Title I of the Code of the City of Ann Arbor be amended to read as follows:

1:215. - Same—Incident review.

- (1) *Incident review.* The Commission shall have the authority to review and examine the actions of the Department with respect to individual incidents after the Department has acted. The review extends to both the conduct of the police officers involved in the incident and to those police officers who examine the incident for disciplinary or other purposes. The Commission's review and examination shall not precede or be concurrent with Department actions, but shall occur after the Department and city have completed all proceedings related to the incident or action under review, including investigative, criminal, disciplinary, complaint, and other proceedings. The Chief of Police may make exceptions for the Commission Information Managers to conduct an earlier review for significant incidents generating public interest that have completed the internal Department and Human Resources review processes (including any internal investigation and

internal grievance process). This exception does not apply to any pending criminal or civil litigation.

(2) *Filing a complaint.*

(a) Any individual, whether or not involved in the incident in question and without respect to citizenship or residence, may file a complaint with the Commission or the Department. The Commission shall not inquire about any complainant's immigration status or gender identity.

(b) The complaint may be filed in person, by telephone, by e-mail, or by mail. The complaint should contain information about the alleged incident, including location, date and involved police officers, if known. Any complaints received by the city that are addressed to the commission, should be promptly forwarded to the Commission.

(c) The complainant may choose to file the complaint anonymously. If filed anonymously, the Commission shall not attempt to determine the identity of the complainant, and shall attempt to communicate with the complainant only if it can do so without learning the complainant's identity. If a complaint is made without revealing the identity of the complainant, the Commission shall treat the complaint as being filed anonymously. A complainant who files anonymously may decide at a later time to reveal the complainant's identity. The fact that a complainant's identity is known to a Commission member shall not prevent the complainant from filing the complaint anonymously.

(d) The Commission may also initiate its own review of the Department's complaint disposition in a particular incident or the Department's response to an incident. The Commission's review shall not precede or be concurrent with Department actions, but shall occur after the Department and city have completed all proceedings related to the complaint disposition under review, including investigative, criminal, disciplinary, complaint, and other proceedings.

(e) There is no time limit for filing a complaint or for initiation of review of an incident. The Commission will exercise appropriate caution in reviewing an incident that is not recent, but it shall act on the recognition that no matter how old an incident is it may hold lessons for the future.

(f) A person who wishes to transmit information to the Commission or city, but does not wish to file a complaint or contact the Commission or city directly, may contact a community liaison designated by the Commission under the ordinance.

(3) *Complaint procedure.*

(a) Upon receipt of a complaint, the Commission will review the complaint and timely provide a copy of the complaint to the Department's Professional Standards Section. To the extent the complaint or inquiry concerns conduct of the Police Chief, the matter shall be referred to the City Administrator. If a complaint does not allege officer misconduct, but relates only to Police-related Policy, the Commission may review the complaint in accordance with section 1:216 without immediate referral to the department.

(b) Upon referral, if a complainant expresses to the Commission that the complainant is not seeking discipline of the police officer, that information shall be communicated to the Department's Professional Standards Section Lieutenant. The Department should consider the complainant's request when taking any remedial action.

(c) The Police Chief will provide status updates regarding the investigation to the Commission. The Commission may serve as a point of contact for the complainant throughout the investigation and review process, and provide the complainant updates as to the progress.

(d) A complainant may be accompanied or assisted throughout the investigation or review process by an advocate, attorney, or other representative of the complainant's choosing.

(e) Upon closure of its internal investigation of a complaint referred by the Commission, the Police Chief shall issue a report to the Commission in accordance with the ordinance.

(f) A complainant and any involved police officer will have the option of appearing before the Commission, or the members of the Commission designated to act on the complaint, during the Commission's review of the incident.

(g) Relevant to the complaint, the Commission may review the actions of the Department and any involved police officer and take appropriate action, including, but not limited to:

- i. Gathering information from the complainant, willing third parties, and publicly available sources;
- ii. Questioning the Police Chief, Deputy Police Chief, or Professional Standards Section Lieutenant about the investigation;
- iii. Informally mediating the matter by facilitating sessions in which persons involved in the incident and others with an interest in it (including representatives of the Department) can participate on a voluntary basis, the aim being to achieve fuller mutual understanding without recrimination. Upon mutual agreement of all necessary parties, the city and Commission may establish a dispute resolution process where complaints are resolved without going through the Department's disciplinary process; and
- iv. Using information learned to make policy recommendations to the Department and city.

(h) The Commission shall develop a system for classifying complaints received by the Commission by the type of misconduct alleged, and in its annual report, the Commission shall state the number of complaints received by the Commission in the past reporting period alleging each type of misconduct.

(4) *Protection against retaliation and intimidation.* Retaliation, actual or threatened, or any form of intimidation against any complainant for filing a complaint, or against a witness, or other person involved for participating in the incident review process; or conduct that could reasonably be perceived as retaliatory, threatening, or intimidating by a city

employee against anyone for their involvement in the complaint or incident review process (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) may result in discipline, up to and including termination of employment. When the Department informs a police officer of a complaint in accordance with the collective bargaining agreement, the Department shall reference these provisions regarding retaliation and intimidation.

*(5) Report by Police Chief.*

(a) Upon closure of its internal investigation of a complaint referred by the Commission, the Police Chief will report to the Commission in writing, stating the Police Chief's determinations as to:

- i. The facts of the incident;
- ii. Whether there was any inappropriate conduct by the police;
- iii. Any discipline that has been or will be imposed; and
- iv. Any changes in Department policies or procedures that ought to be made as a result of the incident.

(b) The Police Chief shall make the report within 30 days of the complaint disposition, provided that 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. In extenuating circumstances, explained in writing by the Police Chief, these time limits may be extended, but only for a reasonable time.

*(6) Access to complaint files.* Except to the extent provided for by federal or state law, the City Charter, a collective bargaining agreement, or a legally recognized privilege, the Department will make available to the Commission or those Commission members designated to act on complaints, all documents related to the incident, including statements by the police 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 should not be produced because of law, collective bargaining agreement, or privacy concerns, the Police Chief shall describe the information and materials withheld and state with particularity the reason why they should not be produced. Documents and other materials shall be redacted only to the extent justifiable in the particular case.

*(7) Disputes concerning production.* Any disputes concerning the production of information and materials may be resolved through a request to the City Administrator or via mutually agreed upon alternative dispute resolution process.

*(8) Information gathering by the Commission.*

(a) *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 its members or representatives. The Commission

shall be sensitive to the needs of the complainant as to when the complainant shall have the opportunity of having this meeting.

(b) *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. To the extent permitted under section 1:219 of this chapter, the Commission may use the services of an investigator in conducting its review.

(c) *Information managers.* Except to the extent provided for by federal or state law, the City Charter, a collective bargaining agreement, or a legally recognized privilege, the Department will make available ~~2 or 3~~ up to 5 designated Commission members (called "Information Managers"), all records, data, and other requested information relevant to the complaint. The Information Managers shall not disclose confidential 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 will work with the Police Chief, City Attorney, City Administrator, City information technology managers, and others to set up a process that offers a secure way for records to be accessed.

(9) *Incident reports by the Commission.*

(a) *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, and the City Attorney. Except in cases filed anonymously, the Commission shall also issue its report to the complainant, and, in most cases, it shall issue its report to the public. The Commission may also issue an interim report at any time it deems appropriate, provided that the Commission shall not issue any report to the complainant or to the public before completion of all investigative, criminal, disciplinary, complaint and other proceedings related to the incident.

(b) *Contents of report.* The Commission's final report with respect to an incident shall state its conclusions, including (a) whether under the facts and circumstances there was any inappropriate conduct by the police; (b) what the response of the Department and, if appropriate, of the city, should be or should have been; and (c) any changes in policies or procedures that ought to be made as a result of the incident.

(c) *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 shall ordinarily avoid identifying police officers by name.

(d) *Response to report.* If the Commission's final report recommends action by the Police Chief or the City Administrator, the Police Chief or City Administrator shall respond to the Commission in writing, and shall endeavor to respond within 30 days or a reasonable timeframe, stating with particularity (a) the extent to which the city accepts the recommendations, (b) the actions, if any, that the city has taken or will take in acting on the recommendations, and (c) to the extent that the city does not accept the recommendations, the reasons why.

(e) *Discussion of report.* If a complainant wishes, the Commission shall afford the complainant an opportunity to discuss the report with the Commission in an open meeting, or with members of the Commission, within 30 days of the time the report is issued to the complainant. Similarly, if an involved police officer wishes, the officer shall have an opportunity to discuss the Commission's report with the Commission in an open meeting or with members of the Commission. Following these meetings, the Commission may, if it deems it appropriate, issue a supplemental report.

(f) The Commission may question the Police Chief, Deputy Police Chief, or Professional Standards Section Lieutenant about the Commission's final report and the City Administrator or Police Chief's response.

Section 3: In the event any court of competent jurisdiction shall hold any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 3: This Ordinance shall take effect ten days after passage and publication.