



POLICE OFFICERS ASSOCIATION OF MICHIGAN

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September 27, 2018

Christopher Taylor, Mayor
City of Ann Arbor
301 E. Huron Street
Ann Arbor MI 48104

Re: Task Force Proposed Ordinance: Independent
Community Police Oversight Commission

Dear Mayor Taylor:

The Ann Arbor Police Officers Association, Ann Arbor Police Supervisors, and Ann Arbor Police Professional Assistants have been notified of the latest draft of the proposed Independent Community Police Oversight Commission Ordinance.

As the City is aware, the Police Officers Association of Michigan (POAM) and its affiliate organizations, the Command Officers Association of Michigan (COAM) and Technical, Professional and Officeworkers Association of Michigan (TPOAM), represent Ann Arbor Police Department Supervisory and Non-Supervisory Law Enforcement Officers, Police Service Specialists and Police Professional Assistants, in labor-management matters. It has been requested that POAM legal counsel review and respond to the City concerning the legality of the proposed ordinance.

For the numerous reasons set forth hereinafter, it is urged that the City of Ann Arbor reconsider its perilous course of action and refrain from adopting an ordinance that is spawned from hypocrisy, fueled by defamation, and proposed without local justification.

The preamble of the task force proposed ordinance is a deplorable rant filled with bias and prejudice against law enforcement. To state that the City of Ann Arbor “acknowledges that law enforcement, across the nation, have historically defended and enforced racism and segregation,” is nothing less than a direct attack on Ann Arbor police officers. The language in the preamble demeans the overwhelming number of law enforcement officers who dedicate their careers and lives to the safety of Ann Arbor citizens.

Ann Arbor Police Officers are among the very best trained and professional law enforcement officers in this State and Nation. The preamble makes the equally irresponsible statement that the City of Ann Arbor “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.” That statement, by its broad sweep, serves to defame Ann Arbor law enforcement officers, characterizing them as not possessing the attributes of “smart policing” in “our community,” and that national issues have to be addressed by the City of Ann Arbor, through an ill-conceived Oversight Commission, to resolve phantom problems in the City of Ann Arbor. In our opinion, these unjustified comments transcend ludicrousness and bespeak bias, hatred and malice toward Ann Arbor law enforcement.

The POAM, and its affiliate organizations, are committed to aggressive administrative and legal action to protect Ann Arbor police officers from the venom which this proposed ordinance spews. The Task Force has manipulated a quasi-laudable purpose with a process and procedure which is, and will be, vindictive, self-serving and retaliatory.

The proposed ordinance lacks moral justification and lacks legal authority. The proposed ordinance, if adopted and implemented, will adversely affect state and federal constitutional protections, as well as impinge upon criminal law rights and labor employment rights.

It is claimed in the Task Force proposed ordinance that the enabling authority is section 5.17(b) of the City Charter. Section 1.4 of the proposed ordinance asserts that the Commission is a “special commission” because it has “broader” responsibilities than a departmental board, as described in section 5.17(a). Pursuant to section 5.17(b), however, a “special commission” is expressly limited to the definition within that section of the charter, being a “commissions on housing, human relations and civil defense.” In addition, the authority of the commission is limited to studies, reports and recommendations as prescribed by the City Council, but as further limited by the City Charter itself. It is also evident that despite the numerous pronouncements and expansion of authority under the proposed ordinance, the commission is not a “quasi-judicial” appeal board or other board or commission required by law. [Section 5.17(c)] The broad power granted to the Independent Community Police Oversight Commission is not consistent with the limited “special commission” enabling authority, nor consistent with powers which can only be exercised by a lawful body imbued with “quasi-judicial” authority. The proposed ordinance, therefore, is invalid on its face, as there is no enabling authority under §5.17(b) of the City Charter which justifies its existence.

It is obvious why the proposed ordinance by the task force was not created as a board or commission under section 5.17(a) of the City Charter. To have done so would have made the board/commission subordinate to the relevant department head, in this case the Chief of Police, given that section 5.17(a) expressly states, “the creation and operation of any such board shall not serve to impair the authority and responsibility of the department head ...” Section 1.4 of the proposed ordinance, curiously, states that the Commission cannot impair the authority of the Police Chief yet, in conflicting verbiage, section 1.4 also claims that section 5.17(a) is not applicable. The conflicting language within the proposed ordinance is irreconcilable. The Task Force is simply attempting an end run on the limitations of the enabling authority in the City Charter by the bogus claim that the commission needs to be a “special commission,” under section 5.17(b).

Notwithstanding the illegality of the proposed ordinance, the scope of authority granted to the commission will lead to a violation of Constitutional and other legal rights. While the proposed ordinance asserts that it will not contravene or conflict with a collective bargaining agreement, such declaration fails to recognize that rights which protect law enforcement officers, by Constitution and law, often transcend that which is stated in the written word of a collective bargaining agreement.

Section 3.1.11.2 of the proposed ordinance is captioned, “Questioning of Officer.” This section asserts that the Commission has authority to direct the Chief of Police to order a law enforcement officer to give a compelled statement and answer questions under the *Garrity v New Jersey*, 385 US 493 (1967) rights protection, while in the presence of union/legal representation under *NLRB v J. Weingarten, Inc.*, 420 US 251 (1975) rights. So that we are crystal clear, if a law enforcement officer is ordered by his employer to appear before the Commission, the law enforcement officer will appear, but the officer will not involuntarily answer questions from the Commission. The Commission is not the employer of Ann Arbor law enforcement officers. The Commission has no legal authority to hire, demote, suspend or otherwise terminate an employee. The proposed ordinance declares, in section 1.3:

Although the Commission is created by the City, it must be functionally independent of City administration to perform its mission. (Emphasis supplied).

The Commission, by its self-declared independence, is not the employer and, as such, has no authority to compel an employee to answer questions. In addition, the *Garrity*

rights protection does not countenance compelling a law enforcement officer to give a statement in the presence of random, non-employer individuals, merely because one of many individuals present may have a tangential link to the employer. All those present are witnesses to an officer's statements, thereby serving to deny the officer of the very same constitutional and legal protections that the Task Force, through the proposed ordinance, hoists as a shield to justify its necessity and sanctimonious declarations.

In addition to the protection of rights set forth in the *Garrity* decision, P.A. 503 of 2006, MCL 15.291, et seq., known as the "Disclosure by Law Enforcement Officers Act," codifies the *Garrity* right as a statutory protection in Michigan. Section 1(b) of the Act reinforces that it is only in the context of information provided to a "law enforcement agency" that the protection is afforded. In addition, section 5 provides that "an involuntary statement made by a law enforcement officer is a confidential communication that is not open to public inspection." The composition of the Independent Community Police Oversight Commission hardly consists of law enforcement agency personnel, given the eligibility requirements in section 2.6 of the proposed ordinance, which make clear that those sitting on the commission must have no relationship whatsoever to the City as a legal entity.

To the extent any attempt is made to deny a law enforcement officer of the constitutional protections delineated in the *Garrity* decision, its progeny, or statutory codification in Michigan, such violation will be met with legal action in State or Federal Court against the offending individuals and entities, including, but not limited to, the City Council, the Commission and all individual members and officials. Fundamental due process and equal protection rights are being trampled by the misguided declarations in the proposed ordinance. For example, despite the claimed quest for transparency, as an underpinning to the proposed ordinance, section 3.1.3 of the ordinance allows various levels of anonymity by a complaining party. Even if a police officer were to answer questions, the officer would be placed in an impossible position, not able to properly defend allegations, as well as being deprived of the fundamental ability to confront an accuser.

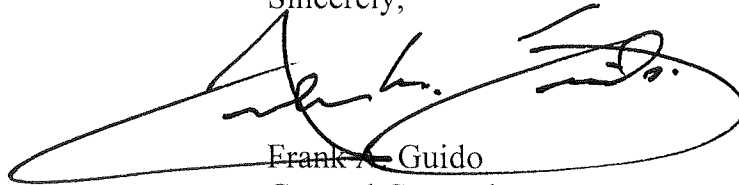
The absurdity of the broad authority in the proposed ordinance is also evident in the bizarre assertion that the Commission has legal authority to issue a subpoena. Section 4.10.2 of the proposed ordinance claims that the basis of authority to issue a subpoena is derived, oddly, from the mere blessing of the City Council by adopting the ordinance, as well as the Uniform Arbitration Act. This sophomoric assertion of a justified underpinning to granting subpoena authority to an illegally-constituted, non-judicial, nor even quasi-judicial body, is irreconcilable with fundamental logic.

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What is clear in this matter is that the Task Force has perverted what might have been a workable, purposeful creation of a limited advisory board under section 5.17(a) of the City Charter. The broad scope of unrealistic and illegal grants of authority to the Commission impairs the validity of the proposed ordinance.

The blatant lack of trust which the Task Force has attributed to the citizens of Ann Arbor concerning the Ann Arbor Police Department and its dedicated law enforcement officers, is unconscionable. On behalf of the entire Ann Arbor law enforcement community, all are held accountable if actions are taken to adopt, implement and enforce the proposed ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Guido", written over a large, horizontal, oval-shaped scribble.

Frank Guido
General Counsel

FG/jlh

cc: Howard Lazarus, City Administrator
Robert Pfannes, Interim Chief of Police
James A. Tignanelli, POAM President
William Birdseye, POAM Business Manager
Kenneth E. Grabowski, Business Agent
Harry Valentine, Business Agent
Susan Casey, Chief Steward, Ann Arbor Professional Service
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Eric Ronewicz, President, Ann Arbor Police Officers
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George Earle Fox, President, Ann Arbor Police Supervisors
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