

INDEPENDENT COMMUNITY POLICE OVERSIGHT COMMISSION

AN ORDINANCE TO REPLACE PREVIOUSLY REPEALED SECTIONS 1:210 THROUGH 1:220 OF CHAPTER 8, TITLE I OF THE CODE OF THE CITY OF ANN ARBOR WITH NEW SECTIONS 1:210 THROUGH 1:220 OF CHAPTER 8, TITLE I OF THE CODE OF THE CITY OF ANN ARBOR (Independent Community Police Oversight Commission)

The City of Ann Arbor ordains:

Section 1. That previously repealed sections 1:210 through 1:220 of Chapter 8, Title I of the Code of the City of Ann Arbor be replaced with new sections 1:210 through 1:220 of Chapter 8, Title I of the Code of the City of Ann Arbor to read as follows:

1:210. - Independent Community Police Oversight Commission.

There is hereby created an Independent Community Police Oversight Commission. Historically, across the nation, policing has been used as a mechanism for social control by means including racial bias, disparities in police use of force, and the impacts of officer-involved shootings and other violent encounters with law enforcement officers. This fact, combined with ongoing racial discrimination in America today, creates distrust and tension between marginalized populations and law enforcement.

The City of Ann Arbor and the Ann Arbor Police Department are committed to building trust and positive relationships with all segments of the community. The City cannot achieve this end without addressing 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.

1:211. - Same—Definitions.

For purposes of the Ordinance, the following terms shall have the following defined meanings:

- (1) *Commission* means the Independent Community Police Oversight Commission.
- (2) *Department* means the City of Ann Arbor Police Department.
- (3) *Ordinance* means the City ordinance that created the Commission, as amended.

- (4) *Police-related Policy* means any policy or practice of the Department 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 Department.

1:212. - Same—Purpose.

The Commission has all of the following purposes:

- (1) To improve and strengthen police-community relations.
- (2) To create an environment which allows for better communication, understanding, and relations between the Department and the community.
- (3) To provide the community with a role in recommending policies and practices that ensure a high quality of police services, and to give the community a voice in influencing the selection of leadership for the Department.
- (4) To provide oversight of the Department with regard to the provision of police services, with the goal that the entire community – meaning everyone who lives, works, studies in, or visits Ann Arbor – may live safely and experience equitable treatment in any interactions with the police.
- (5) To work with the Department to encourage the respectful treatment of all persons, and without undue use of force. This concern is 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, victims of domestic violence, those who suffer from mental illness, and transgender persons.
- (6) To provide a process for outside review of particular incidents to evaluate the police response in the incident as well as the sufficiency of any police investigation related to the incident and to recommend any changes in police policies or practices.

1:213. - Same—Nature of the Commission.

The Commission is created by the City with the authority stated under City Charter Sections 5.17(a) and (b). The Commission will exercise its authority and judgment independent of City administration under the Ordinance. The Commission shall provide advice, through reports and recommendations, to the Police Chief, the City Administrator, and the City Council with respect to matters concerning the Department consistent with the authority in Section 5.17(a) of the City Charter. The Commission shall take other actions as are prescribed by the City Council pursuant to Section 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. Reports, recommendations, conclusions, and findings produced by or for the Commission are not binding, factually or legally, on the City or any part thereof, including the Department, the City Administrator, the City Attorney, and the City Council.

1:214. - Same—Composition of the Commission

- (1) *Membership.* The Commission shall consist of 11 voting members, one of which may be a youth member, to be appointed by the Mayor with the approval of the City Council. In making appointments of members to the Commission, the Mayor shall appoint persons who, insofar as possible, represent the City's diverse population and are committed to improving police and community relations. No active-duty police officer shall serve as a voting member of the Commission. No City employee shall serve as a voting member of the Commission.
- (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 three years, other than any youth member whose term shall be one year. Terms shall be staggered so that approximately one third of the voting members' terms expire each year.
- (5) *Term Limit.* No person serving on the Commission continuously for six years shall be eligible for reappointment, until the lapse of three years.
- (6) *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 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.

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.
- (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 legal 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.

- (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 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.
- (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 a third-party mediator hired in accordance with Section 1:219 of the Ordinance.

(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 the Ordinance, 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 to two or three 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.

1:216 – Same—Reports and Recommendations Concerning Policies, Practices, and Compliance.

(1) *General.* 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 any matter related to the Commission's purposes, including:

- (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 Department;
- (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.

(2) *Access to Information and Materials.*

(a) *General.* To enable the Commission to perform its functions under this section 1:216, it is critical that the Commission have broad access to relevant information and materials that state or reflect Police-related Policies.

(b) *On Request by the Commission.* The Department or the City Administrator shall, except to the extent provided for by federal or state law, the City Charter, a collective bargaining agreement, or legally recognized privilege, or to the extent it poses a threat to the safety of the public or a police officer, provide the Commission with all relevant information and materials that the Commission requests. If the Department or City Administrator believes that some requested information or materials, though relevant, should not be produced under this subsection, they shall describe the information and materials withheld and state

with particularity the reason why it should not be produced.

- (c) *Without Need for Request.* The Department shall report to the Commission on a periodic basis (a) any significant developments bearing on the Department'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) any external complaints filed with the Department, including the substance of the complaint and the process and substance of the Department's response to it, and (c) data on field operations.

(3) *Issuance of Reports.*

- (a) *Special Reports.* The Commission may issue a special report at any time it deems appropriate concerning any Police-related Policy, unless such report would interfere with an ongoing investigative, disciplinary, criminal, complaint, or other proceeding. Such a report may assess the degree of compliance with any Police-related Policy, and it may make recommendations for improvements. Such recommendations shall be addressed, as appropriate, to the Department, the City Administrator, the City Attorney, the head of any City agency, or the City Council.
- (b) *Annual Report.* The Commission shall issue an annual report. This report shall (i) summarize the Commission's activities over the past year, (ii) state aggregate data on the number and types of complaints received and the geographic areas where complaint incidents occurred, (iii) state, to the extent known, aggregate demographic data on complainants, (iv) 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, (v) summarize the Commission's requests for information and the responses to such requests by the City and officials, and (vi) describe the Commission's goals 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 the 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. The Commission shall adopt an annual work plan, which shall include a description of the basis for any funds that the Commission requests be included in the City budget for Commission purposes. The work plan must be submitted to the City Administrator for consideration in accordance with the timelines for the City's budgeting process. The work plan may be included as

part of the Commission's annual report.

- (c) *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.
- (d) *Response to Recommendations.* If a report issued under Section 1:216 makes recommendations to the Department or the City Administrator, the Police Chief or City Administrator 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 on the recommendations, and (c) to the extent that the City does not accept the recommendations, the reasons why. Except to the extent necessary to protect confidential information, the response and discussion shall be public.
- (e) The Commission may question the Police Chief, Deputy Police Chief, or Professional Standards Section Lieutenant about the City Administrator or Police Chief's response to the recommendations.

1:217 – Same—Community Relations.

- (1) *Building Community Relations.* For the Department 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 Department. The Commission shall be proactive in discharging its responsibilities of fostering better communications and understanding between the Department and community, and of ensuring that its complaint procedure is known to the community as open and accessible to the public. To carry out its purpose, the Commission may, consistent with applicable law, host 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 seek input from a 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 Department; 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 as to changes in practices and policies bearing on the City's exercise of the policing function;
 - (c) shall 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 to the extent allowed under Section 1:219 of the Ordinance.

(2) *Community Liaisons*. The Commission may identify one or more persons in the community who may serve as a liaison for persons who wish to provide suggestions, concerns, complaints, or other information related to the Commission's purpose, but who do not wish to contact the Commission or City directly, or participate in the complaint process set forth in the Ordinance. In identifying community liaisons, the Commission shall take reasonable steps to ensure that the liaisons will:

- (a) Be publicly available to any person wishing to provide information;
- (b) Be available to provide the Commission with regular updates regarding all information received related to their role as a community liaison;
- (c) To the best of their ability, accurately report the information received; and
- (d) Understanding that the information the liaison provides to the Commission is likely to be a public record, protect the identity or confidential information of a person who provides information, unless the person expressly authorizes otherwise.

The Commission may evaluate whether and to what extent any of the information received from a community liaison warrants further review, discussion, or response by the Commission, bearing in mind that the Commission likely will not have access to first-hand information.

1:218. 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 Police Chief, consult with and seek advice and recommendations from the Commission as to both the recruitment process to be used and the desired qualifications for the position. Finalists for the position shall meet with the Commission or its members and with the public. The City Administrator shall consult with the Commission before making a final 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 Department.

1:219. – Same—Operations and Support

- (1) *Committees and Assignments.* The Commission may create and form special purpose task forces and subcommittees to carry out the business of the Commission, provided that any report prepared by these groups that the Commission wishes to issue must be presented to and adopted by the Commission as a whole.
- (2) *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 consistent with other City boards and commissions. The City Administrator, Police Chief, and City Attorney shall provide staff liaisons to the Commission with appropriate expertise to support the Commission. Within the Commission's designated budget, the Commission may seek additional professional services, to the extent the contract for those services is approved in accordance with City procurement procedures. The City Administrator shall ensure that such contracts are properly entered into, in compliance with the City 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).
- (3) *Counsel.* The Commission may request outside counsel and the City Council may retain outside counsel to assist the Commission pursuant to the City Charter. The counsel, contract terms, and the scope of services to be performed must be approved in accordance with City procurement procedures. The scope of services may provide that outside counsel provide advice on a specific matter or on an ongoing basis for matters within the scope of the contract and the approved contract amount.
- (4) *Training and Orientation Programs.* Within the Commission's approved budget, each member of the Commission 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, power analysis, Department policies and procedures, restorative practices, and social service resources.

- (5) *Confidentiality Statement.* Each member of the Commission, and every person who renders services to the Commission, shall sign a statement promising to maintain and protect the status of confidential information.

1:220. – Same—Dispute Resolution.

Any disputes concerning the Ordinance may be resolved through a request to the City Administrator or via a third-party mediator hired in accordance with Section 1:219 of the Ordinance.

Section 2. That this ordinance shall take effect immediately upon legal publication.