

ORDINANCE NO. 20220915-087

AN ORDINANCE ORDERING A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF AUSTIN ON MAY 6, 2023, TO SUBMIT TO THE VOTERS A PROPOSED CITIZEN-INITIATED ORDINANCE, CERTIFIED SUFFICIENT ON SEPTEMBER 7, 2022, TO ENACT AN “AUSTIN POLICE OVERSIGHT ACT” THAT WILL STRENGTHEN THE OVERSIGHT OF AUSTIN POLICE AND ENCOURAGE ACCOUNTABILITY FOR OFFICER MISCONDUCT AND BRUTALITY; PROVIDING FOR THE CONDUCT OF THE SPECIAL ELECTION; AND AUTHORIZING THE CITY CLERK TO ENTER INTO JOINT ELECTION AGREEMENTS WITH OTHER LOCAL POLITICAL SUBDIVISIONS AS MAY BE NECESSARY FOR THE ORDERLY CONDUCT OF THE ELECTION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. A special municipal election shall be held in the City of Austin on May 6, 2023, to submit to the voters of the city a proposed citizen-initiated ordinance to enact an “Austin Police Oversight Act” that will strengthen the oversight of Austin police and encourage accountability for officer misconduct and brutality. The ballot shall be prepared to permit voting “Yes” or “No” on the Proposition:

Proposition A: Shall the voters of Austin adopt an initiated ordinance that will deter police misconduct and brutality by strengthening the City's system of independent and transparent civilian police oversight?

PART 2. If the proposition provided in Part 1, above, is approved by a majority of voters voting at the election, the City Code is amended as indicated below:

CHAPTER 2-15: POLICE OVERSIGHT.

§2-15-1 POLICE OVERSIGHT POLICY.

It is the policy of the City of Austin to have a robust system of civilian oversight over the Austin Police Department that emphasizes transparency, encourages accountability for officer misconduct and facilitates enactment of reforms that systematically reduce police brutality and misconduct. The public release of information about police conduct serves a law enforcement purpose by increasing public trust in police and this policy serves that purpose.

§ 2-15-2 DEFINITIONS.

- (A) AGREEMENT means an agreement negotiated between the City of Austin and any association representing Austin police officers;
- (B) ANONYMOUS COMPLAINT means a complaint in which the identity of the complainant is not recorded by the City;
- (C) ASSOCIATION means any organization authorized by Austin police officers to negotiate with the City of Austin on their behalf;
- (D) CITY means either the City Manager or the City Council, depending on whether the Austin City Council elects to exercise direct oversight over the Director of Police Oversight, as provided in Article V, § 7 of the City Charter, or whether the City Council permits the City Manager to supervise the Office of Police Oversight;
- (E) COMMISSION means the Community Police Review Commission;
- (F) COMPLAINT means a verbal or written communication alleging that an officer acted improperly and may have violated any law, policy, rule or agreement governing the actions of any police officer while in the employ of the Austin Police Department;
- (G) COMPLAINANT means any person who submits a complaint;
- (H) DEPARTMENT means the Austin Police Department;
- (I) DIRECTOR means the director of the Office of Police Oversight established in Section 2-15-3 of this chapter;
- (J) DISCIPLINE means a field note, disciplinary suspension, demotion, uncompensated duty, written or oral reprimand, education-based discipline, or any combination of those actions;
- (K) INVESTIGATION means the collection and review of evidence related to a complaint or incident or an administrative review of officer conduct;
- (L) OFFICER means any commissioned police officer employed by the Austin Police Department;
- (M) OFFICE means the Office of Police Oversight established in Section 2-15-3 of this chapter; and
- (N) SERIOUS MISCONDUCT means any act in violation of any law, policy, rule or agreement governing the actions of any officer while

in the employ of the Austin Police Department related to one or more of the following:

- (1) in-custody death;
- (2) use of force resulting in serious bodily injury;
- (3) arrest or detention based on false criminal charges;
- (4) falsification of a police report or false testimony;
- (5) official oppression; and
- (6) discriminatory acts.

§2-15-3 OFFICE OF POLICE OVERSIGHT.

- (A) The Office of Police Oversight is created as an administrative department as provided by the City Charter;
- (B) The office shall:
 - (1) advise the City on the processes and results of investigations involving officers, and any other activities of the department as directed;
 - (2) advise the City on the effectiveness and appropriateness of the department's policies and procedures concerning complaints of police officer misconduct, police officer training, use of force by police officers, community relations, and any other activities of the department as directed;
 - (3) receive complaints and compliments, including anonymous complaints or compliments, concerning the conduct of police officers;
 - (4) serve as a liaison between complainants and the department during investigations of complaints;
 - (5) participate in investigations of officer conduct, including those stemming from anonymous complaints, with the right to gather evidence and directly interview witnesses as determined by the Director;
 - (6) make recommendations to the police chief concerning discipline based on the findings of an investigation of officer conduct and department policies;

- (7) address other department activities of public concern as directed by the City;
- (8) at least once per year, provide both written and oral reports at an open session of the City Council regarding the results of office activities, including information collected and published under § 2-15-3(B)(12) of this Article;
- (9) work with the City to ensure compliance with a policy that encourages public release of police video recordings, as soon as permitted by law, including videos gathered by vehicle dash cameras and body worn cameras, and with a strong preference for transparency when incidents of significant public interest occur;
- (10) conduct, at minimum, a preliminary investigation of every complaint, determine whether a full investigation is warranted, and make recommendations to the City Manager and the Police Chief regarding potential department policy violations prior to the Chief's decision on discipline;
- (11) conduct random assessments of department use of force reviews, analyze all force incident data, and conduct random audits of body camera video and body camera usage;
- (12) act as a central depository for documentation relevant to the mission of the office and make such information available to the public, including but not limited to: complaint outcomes; officer discipline; force incidents; and lawsuits against the City that allege officer misconduct, including the filings and the final settlement amount of any such suits;
- (13) determine training requirements for members of the Commission, in consultation with existing members of the Commission;
- (14) receive briefings related to investigations as requested by the Commissioners, at which the Director or their designee shall include information obtained from the investigation and exercise discretion to omit information of a highly personal nature that would constitute an unwarranted invasion of an individual's personal privacy interests; and
- (15) conduct community engagement activities.

- (C) The office shall be led by a Director, appointed by the City, who shall supervise and direct all activities of the office;
- (D) The Director and their designees shall have direct access, without hindrance, to relevant department personnel and department records, for purposes of pursuing the City's police oversight policy, including:
 - (1) records and personnel with relevant information concerning any use of force incident;
 - (2) records and personnel with relevant information concerning any police misconduct investigation;
 - (3) databases of use of force incident reports; and
 - (4) retained video, including but not limited to police body-worn cameras, police vehicle dash cameras and HALO cameras, as necessary to carry out the responsibilities in § 2-15-3(B), and in accordance with Texas Occupations Code, Chapter 1701.
- (E) The Director shall publicly release general information about the police department, a summary of all complaint outcomes, recommendations that discipline be issued, and detailed information about incidents where the Office recommends discipline, including the name of the officer, audit findings, data analysis, and recommendations for policy, training or legislative changes.

§2-15-4 COMMUNITY POLICE REVIEW COMMISSION.

- (A) The Community Police Review Commission is established as a Board of the City that is independent of and separate from the Austin Police Department;
- (B) The Commission shall consist of eleven members who shall be selected by a process that includes: (1) an open application process; (2) review by the City Auditor for applicant eligibility in accordance with this policy; and (3) final selection by the City Manager. The Commission shall operate in accord with the regulations of City Code Chapter 2-1 ("City Boards"), except as specifically provided herein;
- (C) The City Manager shall provide staff support to the Commission;
- (D) The Commission may:
 - (1) review any investigation of death in custody, serious bodily injury, or other serious misconduct after the completion of any

investigation and prior to the issuance of discipline, and/or in response to the request for review by a complainant;

- (2) recommend to the Police Chief discipline that should be issued in the cases it reviews;
 - (3) request to be briefed by the Director and/or an Internal Affairs Department representative concerning the facts of a particular case under review by the Commission;
 - (4) advise the Police Chief, the Director of the Office of Police Oversight, the City Manager, and the City Council on the effectiveness and appropriateness of the department's policies and procedures concerning complaints of police officer misconduct, police officer training, use of force by police officers, community relations, and any other activities of the department;
 - (5) address other department activities of public concern;
 - (6) assess the effectiveness of the Office of Police Oversight and this ordinance and suggest improvements;
 - (7) report at least annually to the public on the results of its activities, releasing to all interested parties and the public at the same time; and
 - (8) conduct community engagement activities, including public posting of all meeting agendas with the subject matter including incident date and the nature of the incident.
- (E) To be eligible for appointment to the Commission, an applicant must attest that they are independent of and unconnected to any member of a police department or association representing police officers; that they have never been employed or contracted by any police department or association; and they have not held employment in a police department or police association at any time. No other eligibility requirements may be instituted except by amendment to this ordinance.
- (F) Members of the Commission shall:
- (1) have direct access to all necessary records of the department, including records concerning investigations, databases of force incident reports, and all retained video, including but not

limited to police body-worn cameras, police vehicle dash cameras and HALO cameras, as necessary to carry out the responsibilities in part (B) of this section;

- (2) be granted secure online access to all necessary materials for as long as they require to adequately prepare for meetings on individual cases; and
 - (3) attend 20 hours of training created by the Office of Police Oversight within 90 days of their appointment, which shall be focused on the laws, rules and policies governing the conduct of police officers in Austin in accordance with recommendations of the National Association for Civilian Oversight of Law Enforcement, and members may begin to serve before completion of training.
- (G) The Commission shall release to the general public and post on its website all Commission letters making recommendations on reviewed cases and on any other topics pursuant to this ordinance § 2-15-4(D).
- (H) City staff shall clearly designate confidential material when presenting such material to Commission Members, and Members shall agree to maintain that confidentiality. Members may speak in general terms about issues that arise in one or more cases without fear of removal, but Members who release confidential information knowingly, after being informed of its sensitive nature, may be removed from further service on the Commission.

§2-15-5 DUTIES OF POLICE CHIEF.

- (A) In order to ensure the appropriate functioning of the civilian oversight system, the Police Chief retains the authority to discipline officers for misconduct for 365 days starting from the date that a complaint is submitted to the City of Austin or the conduct in question becomes known to the Police Chief or any Assistant Police Chief, whichever is earlier, so long as such discipline occurs within three years of the date of the incident in question;
- (B) When the Police Chief issues a disciplinary decision, they must provide a detailed public, written explanation if the Chief does not follow a recommendation of the Office of Police Oversight to impose discipline;
- (C) If the Commission requests a briefing on a case or investigation, the Police Chief shall direct Internal Affairs to brief the Commission.

During any Commission briefing, the presenter should include information obtained from the investigation and exercise discretion to omit information of a highly personal nature that would constitute an unwarranted invasion of an individual's personal privacy interests.

- (D) The Police Chief shall provide a public written response to any reports issued by the Office of Police Oversight pursuant to § 2-15-3(B)(8) within 90 days;
- (E) The Police Chief shall provide a public written response to any recommendations for officer discipline issued by the Community Police Review Commission pursuant to §2-15-4 (D)(2) within 90 days if the Chief does not follow the recommendation of the Commission; and
- (F) The Police Chief shall provide a public written response to proposals issued by the Community Police Review Commission pursuant to § 2-15-4(D)(3) within 90 days.

§ 2-15-6 ENSURING POLICE TRANSPARENCY.

- (A) The City shall not maintain a secret police department personnel file related to conduct by police officers under Texas Local Government Code 143.089(g), nor shall the Department itself. The City and Department shall maintain police personnel files in accordance with Texas Local Government Code 143.089(a).
- (B) The City shall publicly release information about all complaints and force incidents in accordance with Texas Government Code, Chapter 552.
- (C) Both the Office and the Commission will have unfettered access to all information necessary to conduct effective civilian oversight. Body camera video shall be available to members of the public upon request in accordance with Texas Occupations Code § 1701.661 and procedures recommended by the Office, and dash camera video shall be released to a member of the public who presents the information required by Texas Occupations Code § 1701.661.

§ 2-15-7 CONTRACTS OR AGREEMENTS MAY NOT ALLOW GRIEVANCES BASED ON THIS POLICY.

The City Council shall not approve any contract or agreement concerning the employment of any officer or civilian within the Austin Police Department, if such contract allows police personnel to file grievances based upon actions of

the City, the Office or the Commission that are within the scope of this ordinance, such as maintaining personnel files, investigating incidents, making recommendations to the Chief, and reporting to the public on policy or on individual incidents of misconduct.

§2-15-8 BAN ON AGREEMENTS THAT CONTRADICT POLICE OVERSIGHT POLICY.

The City Council shall not recommend or approve any contract or agreement concerning the employment of any officer or civilian within the Austin Police Department, unless such contract or agreement is consistent with and fulfills each provision of this Chapter.

§2-15-9 CIVIL SERVICE COMMISSION COMPLIANCE WITH THIS POLICY.

The Civil Service Commission shall update its rules as necessary to ensure compliance with this policy.

§2-15-10 CITY ATTORNEY CERTIFICATION OF ANY AGREEMENT AFFECTING AUSTIN POLICE DEPARTMENT PERSONNEL.

Prior to any City Council action to approve any proposed agreement affecting Austin Police Department personnel, the City Attorney shall certify whether or not the proposed contract is consistent with and fulfills each provision of this Chapter.

§2-15-11 EFFECTIVE DATE.

The effective date of this ordinance shall be the earlier of (i) ten (10) days after the date of its final passage by the Austin City Council, as prescribed under Article IV, Section 4(a) of the Austin City Charter or (ii) the date upon which the results of an election required under Article IV, Section 4(b) are canvassed.

This ordinance does not void any contract in effect at the time of its effective date.

§2-15-12 SEVERABILITY.

- (A) Severability due to unenforceability. If any section, paragraph, clause, or provision of this ordinance is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of that section,

paragraph, clause, or provision shall not affect any of the remaining provisions of this ordinance, and to this end, the provisions of this ordinance are declared to be severable. This ordinance shall supersede the Austin City Code to the extent there are any conflicts.

- (B) Severability due to mandatory bargaining. To the extent that any provision of this ordinance may be deemed a subject of mandatory bargaining, the City Council shall not approve any contract that fails to fulfill each such provision.

PART 3. The election shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. The location of the main early voting polling place, the dates and hours for early voting, and the early voting clerk's official mailing address are provided in Exhibit A, attached and incorporated as a part of this ordinance.

PART 4. A direct electronic recording voting system, as the term is defined in Title 8 of the Texas Election Code, shall be used for early voting and for voting conducted on election day. The central counting station is established at the Travis County Elections Division, 5501 Airport Boulevard, Austin, Texas.

PART 5. Notice of this election shall be posted and published in accordance with state law. The notice shall be posted, in both English and Spanish, in the office of the City Clerk and at the City Hall notice kiosk not later than the 21st day before election day. Notice of this election shall be published one time, in English and Spanish, not earlier than the 30th day before the date of the election or later than the 10th day before the date of the election, in a newspaper of general circulation in the City of Austin.

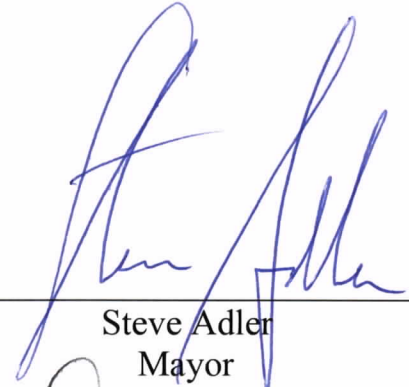
PART 6. In accordance with Chapter 271 of the Texas Election Code, the May 6, 2023 special municipal election may be held jointly with the various political subdivisions that share territory with the City of Austin and that are holding elections on that day. The City Clerk may enter and sign joint election agreements with other political subdivisions for this purpose, and their terms as stated in the agreements are hereby adopted.

PART 7. This ordinance takes effect on September 26, 2022.

PASSED AND APPROVED

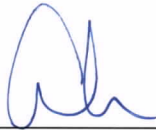
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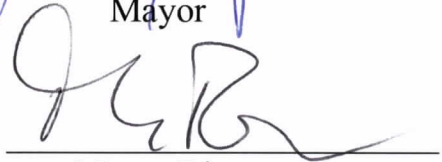
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Myrna Rios
City Clerk