



LABOR RELATIONS DEPARTMENT

MEMORANDUM

TO: Bruce Mills, Interim ACM for Public Safety
Rodney Gonzales, Assistant City Manager

FROM: Sarah Griffin, Interim Labor Relations Officer
Joseph Chacon, Police Chief

DATE: May 4, 2023

SUBJECT: Staff Response to Resolution No. 20220915-091 and Ordinance No. 20230223-061

On February 23, 2023, the Austin City Council passed Ordinance #20230223-061 in relation to Resolution #20220915-091 directing the City Manager to establish Compensation and Benefits for the Austin Police Officers and establishing authority of the Office of Police Oversight.


On March 8, 2023, ACM Bruce Mills issued a memorandum in response to fulfilling the Compensation and Benefits portions of this directive, which is attached hereto.

On March 30, 2023, the City Manager issued a memo, which was further updated on April 18, 2023, directing the Office of Police Oversight in relation to actions to be taken under the City Council Ordinance, both of these memoranda are attached hereto as well.

Both of these memorandums were issued under the direct authority of the City Manager and no further city council resolution was required.

These memoranda became effective April 1 with the expiration of the Meet and Confer Agreement between the Austin Police Association and the City of Austin.


Sarah Griffin
Interim Labor Relations Officer


Joseph Chacon
Police Chief



MEMORANDUM

TO: Mayor and Council Members

FROM: Jesús Garza, Interim City Manager *J. G.*

DATE: March 30, 2023

SUBJECT: **MMAC Office of Police Oversight Process Following Contract Expiration**

The purpose of this memorandum is to provide direction on the operations of the Office of Police Oversight (OPO) after the current meet and confer agreement with the Austin Police Association (APA) expires on March 31, 2023. Many of the OPO's functions have been incorporated into past meet and confer agreements, and I intend for those responsibilities to continue upon the expiration of the agreement, as provided in this memorandum. The OPO will continue to operate under the authority of the City Manager as provided in the City Code.

1. The Director of the OPO will continue to report directly to the City Manager and will continue to advise on the overall processes and results of administrative reviews conducted by the Austin Police Department's Internal Affairs Division (IAD). The OPO may also continue to advise and make non-binding recommendations to the Chief of Police on these investigations. The administrative organization of OPO, including all OPO staff, will continue in its present form after the agreement expires. The Director of OPO will continue to have administrative management authority over all OPO operations and staff.
2. OPO will continue to have full access to IAD's investigative process as outlined in this memo. OPO staff may continue to make inquiries to the IAD Commander, the Chief of Police, or their designee concerning any pending IAD investigation. OPO staff who have access to any information made confidential by state civil service law will continue to maintain the confidentiality of that information.
3. OPO will continue to accept complaints of police misconduct from members of the public in accordance with section 143.312 of the Texas Local Government Code. Complainants will be required to verify the complaint in writing before an OPO employee who is authorized to take statements under oath, and the complaint will be audio recorded. For complainants who wish to remain anonymous, IAD will send a representative to the OPO office to receive the anonymous complaint in the presence of the complainant and will certify that the complainant is anonymous as provided in section 143.312(g). OPO will promptly forward all complaints,

including the corresponding audio recording, to IAD. Individual complaints will not be posted on the OPO website unless the complaint results in a disciplinary suspension.

4. OPO will continue to conduct a preliminary review of complaints in order to recommend a classification level for the complaint and to recommend the investigation of specific policy violations. This preliminary review will be limited to the face of the complaint, and OPO will not have access to evidence in APD's custody—such as body-worn camera recordings—prior to IAD's commencement of an investigation. OPO will have access to any records in IAD's investigative database, but OPO will not have access to any CJIS systems.
5. OPO will have access to IAD interviews of subject officers in the following manner:
 - a. IAD will provide a live video feed to OPO to view the interview from outside the interview room;
 - b. During any break in the interview (or prior to closing the interview if there is no break) OPO may provide the investigator with any questions OPO wants the investigator to put forward;
 - c. The IA investigator will determine if the question falls within the scope of the written policy violation allegations and will pose the question to the subject officer unless it falls outside the scope of the allegations or there are reasons not to ask the question in order to facilitate the flow of the interview. The IAD investigator and the investigator's chain of command—including the Chief of Police—will resolve any dispute about the IAD investigator asking the question.
6. The OPO Director or designee may attend any dismissal review hearing or disciplinary meeting, however, OPO may not attend the meeting while the Chief of Police and/or the chain of command deliberate the final disposition of the investigation and the level of discipline, if any, to be imposed.
7. The Chief of Police retains all authority to determine the final classification of any complaint of officer misconduct and whether to impose discipline, subject to the officer's rights under state civil service law to appeal any disciplinary action.
8. Administrative control and records retention responsibility of any records related to a complaint or investigation of officer misconduct in the custody of OPO will be transferred to IAD effective April 1. This change will apply to all files and documents related to past cases, pending cases, and future complaints that might be filed with OPO. The OPO staff will continue to retain physical custody and access to these records for purposes of fulfilling their oversight responsibilities and will observe all confidentiality protections for those records as provided in state law.

cc: Bruce Mills, Interim Assistant City Manager
Sylvia Hardman, Office of Police Oversight Interim Director
Chief Chacon, Austin Police Department



MEMORANDUM

TO: Mayor and Council Members

FROM: Jesús Garza, Interim City Manager

DATE: April 18, 2023

SUBJECT: **[UPDATED] Office of Police Oversight Processes Following Contract Expiration**

This memorandum provides several clarifications to my memorandum dated March 31, 2023 regarding the operations of the Office of Police Oversight (OPO) now that the meet and confer agreement with the Austin Police Association (APA) has expired. Our interim OPO Director, Deven Desai, started on April 1, and I asked him immediately to review the ordinances, state law and my March 31st memorandum and recommend any changes or clarifications that may be needed or advisable. After meeting with both Deven and Chief Chacon, I am providing this updated statement of certain specific OPO procedures.

To clarify, the March 31st memo was not intended to be an exclusive list of the OPO's responsibilities but instead addressed several specific areas where OPO operations have direct interface with APD operations. Similarly, this memorandum does not list all of OPO's duties now that the labor contract has expired, but focuses on some of the topics that are of interest to the Council and likely to be of interest to the public.

1. **Overall Authority and Scope.** The Director of the OPO will continue to report directly to the City Manager and will continue to advise on the overall processes and results of administrative reviews conducted by the Austin Police Department's Internal Affairs Division (IAD). The OPO will continue to advise and make non-binding recommendations to the Chief of Police on these investigations. In addition, I expect the OPO to continue to make recommendations to me about APD's policies and procedures, training, etc. that the OPO feels can contribute to improvements at APD. Further, for many years the OPO has advised the City Manager on the public release of police videos, and I expect the OPO to continue this role going forward.

The administrative organization of OPO, including all OPO staff, will continue in its present form. The Director of OPO will continue to have administrative management authority over all OPO operations and staff.

2. **Access to IAD Materials.** OPO will continue to have full access to IAD's investigative process as outlined in this memorandum. OPO staff may continue to make inquiries to the IAD Commander, the Chief of Police, or their designee concerning any pending IAD investigation. OPO staff who have access to information made confidential by state civil service law as needed for its responsibilities and will continue to maintain the confidentiality of that information as required by law.
3. **Intake of Misconduct Complaints Involving APD Officers.** OPO will continue to accept complaints of police misconduct from members of the public as permitted under section 143.312 of the Texas Local Government Code. As required by law, such complainants are required to verify the complaint in writing before a person authorized to take statements under oath.

Individuals who wish to make a complaint but remain anonymous have two options. First, the individual can elect to have IAD send a representative to the OPO office to receive the anonymous complaint in the presence of the complainant and will certify that the complainant is anonymous. This protocol meets a specific requirement section 143.312(g).

Alternatively, the individual wishing to remain anonymous can fill out an "anonymous concern" form through a link on the OPO website. The OPO will notify the person that while the "anonymous concern" link is an option, the City may be limited in what it can do with that information if the complainant doesn't verify their statement under oath.

This anonymous concern practice has been in place in the City for quite some time. Residents routinely email/call various officials at the City (APD, their elected official, City Manager's Office, etc.) to relay a concern they may have about a particular police incident. The City's practice has been to look into those concerns, even if they are not sworn to under oath, and take appropriate action. In that way, this link on the OPO site does not constitute a change in City practice, it simply makes an existing practice easier and more visible for our residents.

OPO will promptly forward all complaints to IAD. Individual complaints will not be posted on the OPO website unless the complaint results in a disciplinary suspension.

4. **Preliminary Review of Complaints.** OPO will continue to conduct preliminary reviews of complaints in order to recommend a classification level for the complaint and to recommend the investigation of specific policy violations. Within five days of receiving the complaint, OPO will forward it to APD, and in turn, APD will promptly turn over all relevant evidence in APD's custody (such as body-worn camera recordings) to the OPO. OPO will have access to any records in IAD's investigative database, but OPO will continue to not have access to CJIS systems (which are subject to federal restrictions enforced by the TX DPS).
5. **Access to IAD Interviews.** OPO will have access to IAD interviews of subject officers in the following manner:

- a. Prior to the expiration of the contract, when a subject officer was interviewed, in the room were two investigators from IAD, the OPO representative, and the subject officer had a contractual right to have his/her representative. As a result of the expiration of the contract, only one IAD investigator and the subject officer will be in the room during the interview. The OPO representative, along with the other IAD investigator, will be given a live video feed to the OPO to view the interview from outside the interview room to monitor the interview in real time. The subject officer's representative will no longer be permitted in the interview room, nor will they be given a live feed to the interview.
- b. During any break in the interview (or prior to closing the interview if there is no break) the OPO may provide the investigator with any questions the OPO wants the investigator to put forward.
- c. The IAD investigator will determine if the question falls within the scope of the written policy violation allegations and will pose the question to the subject officer unless either (i) it falls outside the scope of the allegations, or (ii) there are strategic reasons not to ask the question at that point in the investigation. The IAD investigator and the investigator's chain of command—including the Chief of Police—will resolve any dispute about the IAD investigator asking the question.

I have also asked the interim OPO Director to notify me personally should he feel that the OPO's requested questions are being unreasonably withheld.

- d. OPO will also have access to witness officer interviews via a live feed.
6. **Disciplinary Meetings.** The OPO Director or designee may attend any dismissal review hearing or disciplinary meeting, however, as is current practice, the OPO may not attend the meeting while the Chief of Police and/or the chain of command deliberate the final disposition of the investigation and the level of discipline, if any, to be imposed.
7. **Classification of Misconduct Complaints.** The Police Chief retains all authority to determine the final classification of any complaint of officer misconduct and determine whether to impose discipline, subject to the officer's rights under state civil service law to appeal any disciplinary action.
8. **Access to Digital Records.** In complying with the City's general goal of "digitizing" its records, the OPO does not have, and has not had for many years, "physical files" related to an investigation. Instead, the OPO has access to those records through a secure network drive. The OPO will continue to have the same access to those records so that they may complete the directives of both this memorandum and the relevant city ordinances related to police oversight.

9. **Body Camera Video Access.** The OPO will continue to conduct random assessments of body camera usage and the departments use of force.
10. **Reporting to the Council and the Public.** The OPO will continue to report to both the Council and the public annually on the results of its activities. Additionally, the OPO will continue its community engagement activities and keep me apprised on their activities in this regard.

Again, this updated memorandum is not intended to be an exclusive list of the OPO responsibilities. However, I did want to update you on some of the major issues the OPO will be doing. If you should have any questions, please feel free to contact me.

cc: Bruce Mills, Interim Assistant City Manager
Deven Desai, Office of Police Oversight Interim Director
Chief Joseph Chacon, Austin Police Department

ORDINANCE NO. 20230223-061

AN ORDINANCE ESTABLISHING PAY AND BENEFITS FOR OFFICERS OF THE AUSTIN POLICE DEPARTMENT AND ESTABLISHING AUTHORITY OF THE OFFICE OF POLICE OVERSIGHT.

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

PART 1. The Council finds:

- A.** The current meet and confer agreement between the City and the Austin Police Association (the “APA”) effective as of November 15, 2018 (the “Current Agreement”) will expire on March 31, 2023.
- B.** Despite best efforts of the City and the APA, there is a likelihood that the parties will not reach agreement on a successor to the Current Agreement before its expiration on March 31, 2023.
- C.** In Resolution No. 20220915-091 the Council established a City policy to continue the current pay and benefits for APD officers for a limited time, including payout of sick leave hours upon separation, in the event the Current Agreement expires without an approved successor agreement in place.
- D.** In light of significant staffing concerns within the Austin Police Department (“APD”), and in order to maintain effective recruiting and retention of APD officers and continuity of pay and benefit practices while the City and the APA continue to seek a successor to the Current Agreement, it is necessary to provide wage and benefit stability for the officers covered by the Current Agreement to the extent not inconsistent with state civil service laws.
- E.** The City’s Office of Police Oversight (“OPO”) is integral to a robust and effective civilian oversight program and to the City Manager’s Charter authority to supervise, direct, and manage APD.
- F.** Clearly establishing the authority of the OPO as an investigator permitted by state law to review allegations of police officer misconduct, and establishing the OPO as an independent resource for both residents and APD officers to make anonymous complaints alleging misconduct by APD officers, are necessary and healthy components of the City’s civilian oversight program for APD and implement important community values and expectations of Austin residents.

PART 2. Except as provided in Part 3 of this Ordinance, and unless otherwise prohibited by state law, the following pay and benefit provisions of the Current Agreement shall continue in effect until either the effective date of a successor meet and confer agreement or other Council action inconsistent with this Ordinance, whichever comes first:

- A.** Base wages as provided in Article 7, Section 1(d) of the Current Agreement;
- B.** Special pays as provided in Article 7, Sections 2, 3, 4, 5, 6(b), 7, 8, 9, and 10 of the Current Agreement;
- C.** Overtime and other assignment pay as provided in Article 8, Sections 1, 2, 3, and 4 of the Current Agreement;
- D.** Sick leave pay upon separation as provided in Article 9, Section 3 of the Current Agreement; and
- E.** Christmas holiday, vacation leave and sick leave accrual rates and caps as provided in Article 10, Sections 1, 3, 4, and 5 of the Current Agreement.

PART 3. The City Manager is directed to develop and implement by no later than March 31, 2023, a program to address the current and projected shortage of police officers within APD that includes the following compensation elements:

- A.** A base wage rate increase for all APD officers below the rank of Assistant Chief;
- B.** A set of financial incentives paid when new cadets:
 - 1.** Join an APD cadet training academy;
 - 2.** Complete an APD cadet training academy;
 - 3.** Complete APD field training; and/or
 - 4.** Successfully complete the APD probationary period;
- C.** A financial component to incentivize current APD officers to remain with APD;
- D.** A financial component for APD officers that incentivizes the Austin Police Association to resume immediately good faith bargaining for a new meet and confer labor agreement with the City; and

- E. A residency incentive program for officers living in the City of Austin that should consider but not be limited to toll exemptions, utility assistance, lease of rental unit assistance, childcare assistance, residency stipend, and home purchase assistance.

The City Manager is further directed to bring to the Council for consideration any elements of this program that require Council approval.

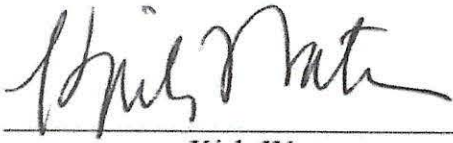
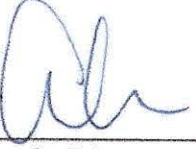
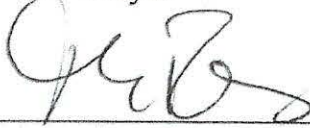
PART 4. Parts 2 and 3 of this Ordinance shall become effective if and only if the Current Agreement expires without an approved successor agreement, and shall remain in effect until either the effective date of a successor meet and confer agreement or March 31, 2024, whichever comes first.

PART 5. The Director of OPO and such other OPO personnel as identified by the Director are designated as investigators under Section 143.312 of the Texas Local Government Code and may receive and investigate misconduct complaints against APD officers, including anonymous complaints from APD officers or local residents, as permitted by state law.

PART 6. The Director of OPO and such other OPO personnel as designated by the Director shall have independent and unfettered access to APD personnel, records, and processes necessary to carry out the functions and responsibilities in Part 5 of this Ordinance, including without limitation access to APD records maintained under Section 143.089(g) of the Texas Local Government Code.

PART 7. This ordinance takes effect on March 6, 2023.

PASSED AND APPROVED:

<u>February 23</u> , 2023	§  § §
	Kirk Watson Mayor
APPROVED: 	ATTEST: 
Anne L. Morgan City Attorney	Myrna Rios City Clerk