

ORDINANCE NO.

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 SECOND PROPOSED CITIZEN-INITIATED ORDINANCE, CERTIFIED SUFFICIENT ON FEBRUARY 3, 2023, TO ENACT AN "AUSTIN POLICE OVERSIGHT ACT" THAT WILL STRENGTHEN THE OVERSIGHT OF AUSTIN POLICE AND ENCOURAGE ACCOUNTABILITY FOR OFFICER MISCONDUCT; PROVIDING FOR THE CONDUCT OF THE SPECIAL ELECTION; 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; AND DECLARING AN EMERGENCY.

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 second 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. The ballot shall be prepared to permit voting "Yes" or "No" on the Proposition:

Proposition B: Shall the voters of Austin adopt an initiated ordinance, circulated by Voters for Oversight and Police Accountability, that will strengthen 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 and encourages accountability. 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 a meet and confer agreement negotiated between the City of Austin and any association elected by Austin police officers to be

their sole and exclusive bargaining agent;

- (B) ANONYMOUS COMPLAINT means a complaint in which the identity of the complainant is not recorded by the City;
- (C) ASSOCIATION means any organization elected by Austin police officers to be their sole and exclusive bargaining agent 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 disciplinary suspension, demotion, 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-J 5- 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.

- (1) In-custody death;
- (2) Use of force resulting in serious bodily injury;
- (3) Falsification of a police report or false testimony; and
- (4) Official oppression.

§ 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 of the department's policies and procedures concerning complaints of police officer alleged 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 concerning the conduct of police officers;
 - (4) serve as a liaison between complainants and the department during investigations of complaints;
 - (5) make recommendations to the police chief concerning discipline based on the findings of an investigation of officer misconduct and department policies;
 - (6) address other department activities of public concern as directed by the City;
 - (7) at least once a year, provide both written and oral reports at an open session of the City Council regarding the results of office activities;
 - (8) 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;

- (9) make recommendations to the City Manager and the Police Chief regarding potential departmental policy violations;
- (10) analyze all force incident data prepared and released in accordance with state and federal law;
- (11) act as a central depository for documentation relevant to the mission of the office and make such information available to the public. All public releases of information shall be made in accordance with state and federal law;
- (12) receive briefings related to investigations as requested by the Commissioners; and
- (13) 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) For purposes of pursuing the City's police oversight policy, the Director and their designees shall have access to relevant department records, including:

- (1) records with relevant information concerning any use of force incident; and
- (2) records with relevant information concerning any police misconduct investigation; and 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(8), and in accordance with Texas Occupation Code, Chapter 1701.

§ 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 eligibility in accordance with their 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 may 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;
 - (2) recommend to the Police Chief discipline that should be issued in the case of death in custody, serious bodily injury, or other serious misconduct after the completion of any investigation it reviews;
 - (3) request to be briefed by the Director and/or an Internal Affairs Department representative concerning the facts of a particular case of death in custody, serious bodily injury, or other serious misconduct after the completion of any investigation 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 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 suggest improvements;
 - (7) report at least annually to the public on the results of its activities as permitted by state law, 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.
- (E) To be eligible for appointment to the Commission, an applicant must not

159 have a felony criminal conviction, received deferred adjudication for a
160 felony, or be under felony indictment. In addition, no person shall be
161 appointed to serve on this Commission who has been indicted for a felony
162 or a crime of moral turpitude, or officially charged with a Class A or B
163 Misdemeanor. A felony conviction, felony indictment, or felony deferred
164 adjudication, after appointment, shall result in the immediate removal of
165 the member from the Commission by the City Manager.

166 (F) Members of the Commission shall:

- 167 (1) have reasonable access to all relevant public records of the department
168 as necessary to carry out the responsibilities in part (D) of this section;
- 169 (2) attend 20 hours of training created by the Chief of Police within 90
170 days of their appointment, which shall be focused on the laws, rules
171 and policies governing the conduct of police officers in Austin, and
172 members may begin to serve before completion of training

173 (G) The Commission shall release to the general public and post on its website
174 all Commission letters making recommendations in connection with death
175 in custody, serious bodily injury, or other serious misconduct after the
176 completion of any investigation on reviewed cases pursuant to this
177 ordinance § 2-15-4(0). All public release of information by the
178 Commission shall be pursuant to and in accordance with state law.

179 (H) City staff shall clearly designate confidential material when presenting
180 such material to Commission Members, and Members shall agree to
181 maintain that confidentiality. Confidential material shall only be made
182 available for review in a designated secure city facility. Members who
183 knowingly release confidential information shall immediately be removed
184 from further service on the Commission.

185 **§2-15-5 DUTIES OF POLICE CHIEF.**

- 186 (A) In order to ensure the appropriate functioning of the civilian oversight
187 system, the Police Chief retains the authority to discipline officers for
188 misconduct;
- 189 (B) When the Police Chief issues a disciplinary decision subject to 143.089(a),
190 they must provide a detailed public, written explanation;
- 191 (C) If the Commission requests a briefing on a case or investigation within the
192 purview of the Commission, the Police Chief shall direct Internal Affairs

to brief the Commission.

§2-15-6 ENSURING POLICE TRANSPARENCY.

- (A) The City shall maintain police department personnel files related to conduct by police officers pursuant to the Texas Local Government Code.
- (B) The City shall publicly release information about all complaints and force incidents in accordance with Texas Government Code, Chapter 552.
- (C) Body camera video shall be made available upon request in accordance with Texas Occupations Code §1701.661.

§2-15-7 AGREEMENTS ON POLICE OVERSIGHT POLICY. The City Council shall ensure that any contract or agreement concerning the employment of any officer within the Austin Police Department is consistent with provisions of this Chapter.

§2-15-8 CIVIL SERVICE COMMISSION COMPLIANCE WITH THIS POLICY. The Civil Service Commission shall update its rules as necessary to ensure compliance with this policy.

§2-15-9 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.

§2-15-10 EFFECTIVE DATE. The effective date of this ordinance shall be the earlier of (i) then (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.

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

§2-15-11 SEVERABILITY. 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.

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. The Council finds that the need to immediately begin required preparations for this election constitutes an emergency. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety.

PASSED AND APPROVED

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_____, 2023

Kirk Watson
Mayor

APPROVED: _____

Anne L. Morgan
City Attorney

ATTEST: _____

Myrna Rios
City Clerk

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