

ORDINANCE NO. 5337

AN ORDINANCE to amend Chapter 4 (COMMITTEES, BOARDS AND COMMISSIONS) of Title 2 (GENERAL GOVERNMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended, by adding a new Article AA (INDEPENDENT COMMUNITY POLICING REVIEW BOARD) and to amend Article A (GENERAL PROVISIONS) of Chapter 1 (POLICE PROTECTION) OF Title 4 (PUBLIC SAFETY) of The Code of the City of Alexandria, Virginia, 1981, as amended, to add Sections 4-1-5 (INDEPENDENT POLICING AUDITOR/INVESTIGATOR) AND 4-1-6 (INDEPENDENT POLICING AUDITOR/INVESTIGATOR DUTIES AND RESPONSIBILITIES).

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 4 of Title 2 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding new Article AA, “Independent Community Policing Review Board,” as follows:

ARTICLE AA – INDEPENDENT COMMUNITY POLICING REVIEW BOARD

Sec. 2-4-220 Independent Community Policing Review Board

- (a) There is hereby established a commission to be known as the Independent Community Policing Review Board (“Board”). The operation of the Board established pursuant to this ordinance shall be consistent with Virginia law and regulations.

Sec. 2-4-221 Board Purpose and Scope

- (a) Purpose: The purpose of the Board is to enhance policing legitimacy and to increase and maintain trust between and among the police department, city council, city manager and the public. The Board shall: provide timely, fair and objective review, investigation and evaluation of policing policies, practices, procedures, and outcomes in Alexandria; provide meaningful assessments and corrective recommendations intended to remedy discriminatory practices, including racial and social inequities, that it may find; ensure the protection of all communities through recommended actions and reform, including in the criminal justice system; and recommend strategies for effectively implementing these reforms in our community.
- (b) Scope: The Board shall have the authority to investigate the matters as assigned in Section 2-4-227, review investigations completed by the Alexandria Police Department (APD) for certain matters, and evaluate policing practices, policies, procedures, and outcomes in Alexandria, issue findings to the public, and provide actionable recommendations to the city council, the city manager, the school board, the school superintendent, APD and other public agencies regarding appropriate discipline, policing practices, policies and procedures in Alexandria. The Board is hereby authorized to perform the following duties:

- (c) Procedural Memorandum of Understanding: In order to carry out its scope and authorized functions and to define in more detail the process and terms articulated in its scope, the Board shall enter into a memorandum of understanding (“MOU”) with the APD. The MOU shall be signed by the police chief and the city manager. The MOU shall define the terms of the relationships and mutual obligations between the Board and APD. Additionally, the Board is authorized to enter into an MOU with any other agency in support of Board investigatory authority. The Board is authorized to negotiate the provisions of these MOUs, assisted by the city council appointed Independent Policing Auditor/Investigator, and the City Attorney’s Office. If a provision of these MOUs conflict with a provision of this enabling ordinance, the provision of the enabling ordinance shall govern.
- (d) Access to APD Records: The Board and the Independent Policing Auditor/Investigator, shall be provided full access to all APD reports, files and records related to the Board’s investigation or review of complaints filed with the Board or with APD. All records, documents and materials in the possession of APD or the City that are determined by the Board to be necessary and requested by the Board to carry out its scope and authorized functions shall be provided in unredacted form. If such documents contain confidential information such as Personally Identifiable Information, the information may be reviewed in a closed session of the Board in order to maintain the confidentiality. If the documents requested are part of a criminal investigative file for an active criminal investigation which could be compromised by the revelation of the process, evidence, methods, scope, or other factors in such investigation, APD shall provide such documents to the Independent Policing Auditor who shall not provide it to the Board or share with the public until such time as the investigation is completed or a determination is made that the criminal investigation will no longer be compromised.
- (e) Budget: In order to carry out its duties the Board and Office of the Independent Policing Auditor/Investigator shall be provided an annual budget subject to appropriation by City Council, and shall expend the funds provided consistent with:
- i. the purposes and scope of the Board and of the Office of the Independent Policing Auditor/Investigator;
 - ii. the budget and appropriation approved by City Council; and
 - iii. city procurement and expenditure regulations and practices.
- (f) Board Reports: The Board shall produce public reports regarding the work of the Board and disseminate such reports in hardcopy and online, including, but not limited to:
- i. a written report to the City Council by September 1 of each fiscal year of its activities for the prior fiscal year under the provisions of this chapter along with any comments and recommendations as it may choose to make; and
 - ii. a written report after each investigation conducted pursuant to Section 2-4-227(d) which shall not include any Personally Identifiable Information, or criminal or juvenile information prohibited from being disclosed by Virginia State Code or

Federal Law. The reports of each investigation shall be provided to the public with all narratives, findings, recommendations and any disciplinary actions.

- (f) Other Duties: Undertake any other duties as reasonably necessary for the Board to effectuate its purpose as defined in this ordinance;

Sec. 2-4-222 Board Member Requirements and Term of Office

- (a) The Board shall be composed of seven voting members appointed by the City Council, which shall endeavor to create a fair, objective, independent, diverse, and representative body which shall reflect the demographic diversity of the City.
- (b) The seven voting members of the Board shall be residents of the City of Alexandria and shall demonstrate fairness, integrity and objectivity and will be chosen on the basis of expertise and personal experience relevant to the performance of the duties of the Board. City Council shall appoint voting members who are representatives of the following groups (though one member may be representative of more than one group):
 - i. at least three members who come from historically, racially or socially marginalized communities that have commonly experienced disparate policing in Alexandria or the Commonwealth of Virginia; and
 - ii. at least one member who represents an organization, office, or agency that seeks racial or social justice or that otherwise advocates on behalf of historically, racially or socially marginalized communities, particularly communities that may have experienced disparate policing;
- (c) Ex-officio, non-voting members:
 - i. at least one nonvoting, ex-officio member who shall have past experience in law enforcement, but shall not be a current employee of or an immediate family member of a current employee of a law enforcement agency and shall be at least three years honorably removed from service.
- (d) No voting or nonvoting member shall be a current or former City employee, a current or former City elected official, a current candidate for public office, a current employee of a law enforcement agency, or or an immediate family member of any of the preceding. When used in this section, the definition of “former” means less than three (3) years separated from service.
- (e) Except as to the inaugural Board, members shall be appointed for terms of three-years each. Board members’ terms shall be staggered. To that end, the City Council shall appoint three voting members of the inaugural board to 18-month terms and four voting members to three-year terms. A Board member may be appointed to no more than two consecutive three-year terms.

Sec. 2-4-223 Conflicts of Interest and Confidentiality

- (a) The Board and each member shall comply with the Virginia State and Local Government Conflict of Interests Act under Virginia Code §§ 2.2-3100 et seq.
- (b) Except as included in the Board Reports defined in Section 2-4-221 (f) and to the extent allowed under the Virginia Freedom of Information Act, each member shall maintain the confidentiality of all confidential or privileged information, including but not limited to:
 - i. disciplinary actions, memos and reports that the member receives during service on the Board.
 - ii. statements of a police officer, or APD employee, who was required by APD to give a statement.
 - iii. criminal investigative files
- (c) All original records provided to the Board by APD shall remain official APD records.

Sec. 2-4-224 Quorum, Voting, and Meetings

- (a) The Board shall comply with the procedures for Board and Commissions in Article A of Title 2, Chapter 4, unless expressly amended in this Article.
- (b) The Board, assisted by the Independent Policing Auditor/Investigator, is authorized to develop and implement its own bylaws, administrative systems, and operating policies and procedures, consistent with existing federal and state law, state regulation, and this enabling ordinance. Such bylaws shall be subject to public notice and public hearing before adoption by the Board and would become effective upon adoption by City Council.
- (c) The Board shall meet as often as necessary to conduct its business, but no less frequently than four times per calendar year.
- (d) Meetings of the Board shall comply in all respects with the meeting regulations of the Virginia Freedom of Information Act including being open to the public except under circumstances when the topic is authorized by the law to be discussed in closed session.
- (e) To take any action, a quorum of at least five out of seven voting members must be present.
- (f) The Board shall keep minutes of its Board Meetings, and those minutes shall include:
 - i. the date, time, and location of each meeting;
 - ii. the members present and absent;
 - iii. a summary of the discussion on matters proposed, deliberated, or decided; and
 - iv. a record of any votes taken.
- (g) The Board meeting minutes are public records and subject to inspection pursuant to the Virginia Freedom of Information Act.

Sec. 2-4-225 Support of Board

(a) Board Staff

- i. The city council shall appoint an Independent Policing Auditor/Investigator pursuant to Section 4-1-5 and 4-1-6 of this Code who shall staff the Board and coordinate the Board's administrative functions.
- ii. The Independent Policing Auditor/Investigator shall hire such investigators as shall be necessary to conduct the investigations assigned to the Board. Such investigators may be consultants or full-time employees depending on the demand for the investigations.
- iii. The City Attorney, or its designee, shall serve as legal advisor to the Board. As to a particular matter, and in the event the Board or the City Attorney determine that there is a conflict of interest that precludes effective representation by the City Attorney's Office, the Board shall retain outside counsel to advise the Board from a list of attorneys recommended by the City Attorney.

(b) Other Support from the City

- i. A website shall be established for the Board hosted on the City's website. The Board shall control what is posted on the Board's website to the extent it complies with all applicable Federal, State and local laws.
- ii. All public meetings of the Board shall be videotaped and made available to the public on the City's website.
- iii. The City shall not interfere unreasonably with the Board's decisions, assisted by the Independent Policing Auditor/Investigator, to post materials to or remove materials from the Board's website.
- iv. Board members shall be provided with a City email address to be used exclusively for Board-related matters.
- v. The City, including all city departments, boards, commissions, and staff shall make good faith effort to cooperate with and assist the Board, and shall comply with , all reasonable Board requests or expeditiously provide a reason for rejection.

Sec. 2-4-226 Board Training

At least once every year, and within six months of appointment to the Board, Board members shall participate in the following training:

- (a) at least eight hours of training, presented by the National Association for Criminal Oversight of Law Enforcement or a comparable professional organization.
- (b) Training by the applicable city staff addressing the following matters:
 - i. legal and ethical obligations of members of a public board;

- ii. APD policies and training, including but not limited to defensive tactical training, Crisis Intervention Training, and de-escalation training;
 - iii. relevant privacy rules and City policies and procedures involving liability, employee discipline, and other matters related to police operations; and
 - iv. APD and City administrative systems, processes, structures and operations.
- (c) at least three ride-along sessions with APD patrol operations per calendar year.
- (d) The City and the Independent Policing Auditor/Investigator, shall provide Board members with additional training, which shall include but not limited to relevant training by subject matter experts on mental health, trauma-informed policing, civil rights and constitutional law, race and systemic racism, community organizing and outreach, mediation, investigation, and policing practices, policies, and administration.

Sec. 2-4-227 Board Duties

(a) Board Readiness Resolution

- i. Within thirty (30) days after the initial board members are appointed by the City Council, the Board shall meet to establish its practices and procedures. When the Board has established its procedures for how to take in Complaints, how investigations will be conducted, the Memorandum of Understanding required pursuant to Section 2-4-221(c) has been executed by all parties, and the board is sufficiently staffed, it shall pass a Resolution indicating its readiness to take on the responsibilities designated to it in this Article. No current processes for complaint intake or investigations of complaints shall be transferred to the Board unless and until such Resolution is adopted by the Board.

(b) Complaint Intake

- i. The Board will develop and administer a process for receiving community complaints regarding conduct of APD law enforcement officers and civilian employees and referring complaints to APD or the Independent Policing Auditor/Investigator depending on the nature of the complaint, for investigation. This process shall be separate and distinct from any existing procedures by which the APD receives community complaints as specified under Virginia Code § 9.1-600;
- ii. Complaints filed with the Board may be submitted using a form provided by the Board or may be submitted orally by a complainant. Complaints filed orally shall capture the same information included in the complaint form developed by the Board.
- iii. Information about the process for filing a complaint with the Board, complaint forms, and general information about the Board and its purpose and scope shall be made available online and at the office of the Independent Policing Auditor/Investigator, APD, the Office of Human Rights, as well as other locations deemed effective for making such forms and information widely available

- iv. Information about the process for filing a complaint with the Board, complaint forms, and general information about the Board and its purpose and scope shall be made readily available in English, Spanish, Amharic and Arabic and in any additional language as requested by an individual looking to submit a complaint to the Board.
- v. Complaint forms shall request information regarding the incident including, but not limited to, the following:
 - 1) Name, address and contact information for the person filing the complaint;
 - 2) a statement describing the reasons for the complaint;
 - 3) the specific police behavior of concern;
 - 4) a description of the incident in which the behavior occurred; and
 - 5) information regarding witnesses to or persons with knowledge of the incident known to the complainant, including but not limited to names, addresses, and phone numbers, if known at the time the complaint is filed.Failure to provide all information on the form by the complainant shall not render the complaint unreviewable.
- vi. This process shall be separate and distinct from any existing procedures by which the APD receives community complaints as specified under Virginia Code § 9.1-600;

(c) Board Review of APD Investigations

- i. Except for matters identified in subsection (d) herein, APD shall continue to investigate all complaints submitted to APD or to the Board. APD shall complete its investigation of the complaint and provide an investigation report to the Board within sixty (60) days. The Board shall extend the 60-day period upon request of the Police Chief to protect an ongoing criminal investigation, or for other good cause, with notice to the complainant and city council.
- ii. The Board may review all investigations conducted by APD Office of External Affairs and Professional Responsibility (OEAPR) regarding conduct of APD law enforcement officers and civilian employees, whether received by the APD or the Board, to ensure their thoroughness, completeness, accuracy, objectivity, impartiality and the sufficiency of any discipline resulting from such investigations. The Board may consider reducing the review to only a selected number of investigations or investigations of a certain nature based on criteria to be articulated by the Board and set forth in writing.
- i. After completing an investigation review including a public hearing, the Board may reach one of the following findings:
 - 1) concur with all or some of the findings and determinations detailed in the investigation report;

- 2) advise city council, the city manager, and the APD that the findings are not supported by the information reasonably available to the APD and recommend further review and consideration by the police chief; or
- 3) advise city council, the city manager, and the APD that, in the Board's judgment, the investigation is incomplete and recommend additional investigation.

(d) Board Investigation of Complaints and Incidents

- i. Investigations of the following incidents, whether they come in as a complaint or not, shall be conducted by the Independent Policing Auditor/Investigator on behalf of the Board:
 - 1) "Incidents resulting in death" including any incident which results in death of any person involved in the incident.
 - 2) "Use of Force" incidents, defined as the application of force sufficient to (i) create a reasonable risk of death, (ii) cause serious and protracted disfigurement, or (iii) result in impairment of the function of any bodily organ or limb. It includes incidents in which a police officer deploys a striking implement, Taser or similar device, oleoresin capsicum (pepper) spray or other chemical irritant, less lethal weapon or a firearm or is applied using hands or any other part of the body.
 - 3) "Severe misconduct" defined as dereliction of duty or unlawful or improper behavior which shall include the following offenses listed in AR 6-20, as the same may be amended from time to time:
 - a. Willfully or negligently damaging, defacing or destroying City records, City property, tools or equipment, or the property of another employee.
 - b. Theft, misappropriation or unauthorized removal of City records, or of public property or of property belonging to another City employee.
 - c. Violating safety rules or the Virginia Traffic Code where such a violation poses a threat to life.
 - d. Threatening or intimidating subordinates, fellow employees, supervisors or members of the public.
 - e. Willful or serious neglect in the performance of assigned duties or in the care, use, or custody of any City property.
 - f. Criminal or other misconduct occurring on or off the job which is related to job performance or is of such a nature that to continue the employee in the assigned position or in any City employment capacity would constitute negligence in regard to the City's duties to the public or to other City employees.
 - g. In any matter within the jurisdiction of any officer, department or agency of the City: (a) the knowing falsification, concealment or cover-up of a material fact, and/or (b) the knowing making of any false, fictitious or

fraudulent statement or representation, and/or (c) the making or using of any writing or document knowing the same to contain a false, fictitious or fraudulent statement or entry.

- h. Sexual conduct, even consensual conduct, on the job.
- i. Verbal or other conduct regarding an individual or group that maligns or shows hostility for the individual or group because of race, color, religion, gender, national origin, age, disability, sexual orientation, or gender identity and expression.
- ii. If, after making a good faith effort to obtain, voluntarily, the attendance of witnesses and the production of books, papers, and other evidence necessary to perform its duties, the Board is unable to obtain such attendance or production, the board by majority vote may direct the Independent Policing Auditor/Investigator, on behalf of the Board, to apply to the Alexandria circuit court for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence, and the court may, upon good cause shown, cause the subpoena to be issued.
- iii. At the conclusion of the investigation, the Independent Policing Auditor/Investigator shall forward the file with a report of investigation to the Board. The Board shall hold at least one public hearing on the investigation. At the conclusion of the public hearing, the Board may take one of the following actions:
 - 1) Dismiss the complaint if, based on the file and report of investigation, it determines that the complaint lacks merit or the incidents was justified;
 - 2) Refer the complaint to the Commonwealth's Attorney for the City of Alexandria; and
 - 3) Recommend disciplinary action to be taken by the Chief of Police.
- iv. If the APD declines to implement the discipline recommended by the Board, the Chief of Police shall, within 30 days of the Board's recommendation, create a written record, which shall be made available to city council, the city manager, and the public, of its rationale for declining to implement the recommendation of the Board.

(e) Board Policy Recommendations and Duties

- i. The Board shall have the following duties regarding review of police policy and procedure:
 - 1) review and evaluate existing and proposed APD administrative directives, including all rules, policies, and procedures which direct the operation of the

- APD and its employees including the implementation of such directives, rules, policies and procedures;
- 2) review and evaluate reports issued and data collected by the APD related to policing practices, policies, procedures, and outcomes;
 - 3) receive, review and evaluate the annual budget and expenditures of the APD and make budgetary recommendations;
 - 4) advise city council on the hiring and annual evaluation of the Independent Policing Auditor/Investigator;
 - 5) recommend legislation, policy changes and other actions related to review and evaluation conducted by the Board to the city council, city manager, APD, school board, school superintendent, and other public agencies;
 - 6) conduct community outreach in the city related to the review and reform of policing practices, policies and procedures in Alexandria and the work of the Board;
 - 7) undertake any other duties as reasonably necessary for the Board to effectuate its lawful purpose to effectively review the policing agencies as authorized by the city; and
 - 8) review and evaluate periodic reports from the Police Chief regarding implementation of recommendations made by the Board.
- ii. The Board may recommend policies or procedures to city council, the city manager and the APD concerning police practices, policies and procedures. The Board shall present in writing its findings, and recommendations with supporting rationale to city council, the city manager and the APD within thirty days from the date the Board adopted the recommendations.
- a. The Board's recommendations shall be included in any public reports issued by the Board, including hardcopy and online.
 - b. If the APD declines to implement any changes recommended by the Board, the Chief of Police shall, within 30 days of the Board's recommendation, create a written record, which shall be made available to city council, the city manager, and the public, of its rationale for declining to implement the recommendation of the Board.

Sec. 2-4-229 Exclusions

- (a) The Board shall not consider claims or issues involving the following:

- i. Complaints involving any incident that occurred more than two years before the filing of the complaint with the Community Policing Review Board or the APD;
- ii. Any financial management, or procurement decisions made by APD, or any individual hiring, assignment and promotional decisions made by the APD;
- iii. If any agency having responsibility for criminal investigations or prosecutions has initiated a criminal investigation or proceeding against any police officer or officers who are the subject(s) of an incident or complaint that the Board has responsibility for investigating pursuant to this Article, the Board shall defer its preliminary inquiry and investigation until said criminal proceedings have been withdrawn or concluded; and
- iv. Any other claim outside the scope of the Board's authority as determined by this Article or applicable State Law.

Sec. 2-4-230 Review of Community Policing Review Ordinance

- (a) The city manager in consultation with the Board, Independent Policing Auditor/Investigator, community stakeholders, APD and APD employees shall have conducted and submitted to city council by April 1, 2023 a review of this ordinance, its effectiveness, including recommendations for improvements.

Section 2. That Article A of Chapter 1 of Title 4 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding new Sections 4-1-5 and 4-1-6, as follows:

Sec. 4-1-5 Independent Policing Auditor/Investigator

City Council shall appoint an Independent Policing Auditor/Investigator with the terms and conditions of such appointment set forth in an employment agreement. The Independent Policing Auditor/Investigator shall serve at the pleasure of City Council. The Independent Policing Auditor/Investigator shall be provided office space by the City, but such office space shall not be housed in any Alexandria Police Department facility.

Sec 4-1-6 Independent Policing Auditor/Investigator Duties and Responsibilities

The Independent Policing Auditor/Investigator shall:

- (a) provide the necessary administrative and policy support for the Community Policing Review Board, as well as assist the Board with achieving its purpose and in carrying out its scope;
- (b) have authority to hire and supervise and make employment decisions regarding the Independent Policing Auditor/Investigator's staff within existing City Human Resources systems and City Administrative Regulations;
- (c) be responsible for the independent review of Alexandria Police Department current or proposed policing practices, rules, policies, procedures, directives and outcomes and present findings of such reviews and any resulting recommendations to the Board;
- (d) perform a quality assurance function with the goal of identifying systematic changes that will improve police services to the community;
- (e) create and manage a community complaint and case tracking system;

- (f) conduct investigations of incidents regarding the matters assigned by the 2-4-227 of the City Code to the Board for investigation;
- (g) review completed investigations by the Alexandria Police Department Office of External Affairs and Professional Responsibility.
- (h) review of any disciplinary actions taken that may arise as a result of investigations conducted by the APD; and
- (i) have full access to unredacted Alexandria Police Department reports, files and records, including disciplinary records, related to completed reviews of complaints filed with the Board or with the Department, as well as related to and completed reviews of uses of force by the Department.
- (j) Except as included in the Board Reports defined in Section 2-4-221 (f), maintain the confidentiality of such disciplinary records and criminal investigative files as well as any statement of a police officer of APD employee who was required by APD to give a statement.

Section 3. That Title 2, Chapter 4 as amended pursuant to Section 1 of this ordinance and Title 4, Chapter 1 as amended pursuant to Section 2 of this ordinance, be, and the same hereby are, reordained as part of the City of Alexandria City Code.

Section 3. That the provisions of this ordinance shall become effective July 1, 2021.

Adopted: April 17, 2021

JUSTIN M. WILSON
Mayor