

ORDINANCE NO. _____, SERIES 2020

AN ORDINANCE CREATING THE CIVILIAN REVIEW & ACCOUNTABILITY BOARD AND THE OFFICE OF INSPECTOR GENERAL, AND ABOLISHING THE CITIZEN COMMISSION ON POLICE ACCOUNTABILITY. (AMENDMENT BY SUBSTITUTION)

SPONSORED BY: COUNCIL MEMBERS MCCRANEY, HOLLANDER, AND PRESIDENT JAMES

WHEREAS, Louisville Metro Council and Louisville/Jefferson County Metro Government recognize that the Louisville Metro Police Department derives its moral and social character from the community at large; and

WHEREAS, in order to have effective policing that aligns with Louisville/Jefferson County Metro Government's community values, needs, and expectations, the police department must have the faith, trust, respect, and support of the community; and

WHEREAS, while the Citizens Commission on Police Accountability has performed a valuable function for the community in the past, the Louisville Metro Council and Louisville/Jefferson County Metro Government wish to expand on that existing work and create a more robust citizen-based review of both operations and complaints; and

WHEREAS, Louisville Metro Council and Louisville/Jefferson County Metro Government wish to make the citizens of the community a more integral part of the process by which the conduct of our sworn officers is investigated and reviewed; and

WHEREAS, Louisville Metro Council and Louisville/Jefferson County Metro Government find that a Civilian Review & Accountability Board should guide an independent Inspector General in reviewing and investigating police conduct as provided herein; and

WHEREAS, the creation of the new Civilian Review & Accountability Board and Office of Inspector General is designed to promote police accountability and reduce civilian complaints; and

WHEREAS, a civilian review board should provide objective and independent civilian-led oversight of the Louisville Metro Police Department in an effort to enhance transparency and trust, to promote fair and effective policing, and to protect the rights of the people of Louisville Metro.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: A new section of Chapter 36 of the Louisville Metro Code of Ordinances (“LMCO”) is created as follows:

**Section 36.70. Establishment of the Civilian Review & Accountability Board;
Scope of Authority**

(A) There is hereby established a Civilian Review & Accountability Board for Louisville/Jefferson County Metro Government for the purpose of:

(1) Increasing citizen involvement in the investigation and review of allegations of police misconduct within the Louisville Metro Police Department (LMPD); and

(2) Providing oversight to the Office of Inspector General as created in LMCO Section 36.78.

(B) The Civilian Review & Accountability Board shall be provided a separate budget sufficient to carry out the responsibilities and functions established in this subchapter.

(C) The Board shall adopt bylaws and other rules as it deems necessary for its organization and proceedings consistent with the laws, ordinances and resolutions of the Commonwealth of Kentucky and Louisville/Jefferson County.

SECTION II: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.71. Appointment; Term; Leadership; and Compensation of the Civilian Review & Accountability Board

(A) The Civilian Review & Accountability Board shall have eleven members, and six members shall constitute a quorum. Each member shall be appointed by the Mayor and approved by Metro Council, subject to shifting appointment authority contained in KRS 67C.139. The Mayor's appointments shall be made from names submitted by the following sources or processes, after eligibility for membership has been confirmed pursuant to LMCO Section 36.72:

(1) For each of three Board positions, the Mayor shall appoint from lists of recommendations provided by Metro Council. Metro Council shall provide the Mayor with a list of two names for each of the three positions;

(2) For two board positions, the Mayor shall solicit self-nominations from citizens, to be collected via the database required under LMCO 32.003, and shall appoint from among the citizens who applied;

(3) For two board positions, the Mayor shall have complete discretion; and

(4) For the remaining four at-large Board positions, each of the entities named in this subsection may submit lists of up to two names to the Mayor for selection as appointees. When an entity submits a list of two names for an open Board position, the

Mayor shall select no more than one nominee from that entity's list. The nominating entities are:

- (a) The American Civil Liberties Union of Kentucky;
- (b) Greater Louisville Inc.;
- (c) The Interdenominational Ministerial Coalition;
- (d) Louisville Branch of the National Association for the Advancement of Colored People;
- (e) Louisville Urban League, Inc.;
- (f) University of Louisville, Chair of the Department of Public Health, for nominations of persons with expertise in the fields of mental health and substance abuse;
- (g) Louisville Bar Association; and
- (h) The Young Professionals Association of Louisville.

(B) For the initial Civilian Review & Accountability Board, staggered terms shall be as follows:

(1) One member appointed through subsection (A)(1) of this Section, one member appointed through subsection (A)(2) of this Section, one member appointed through subsection (A)(3) of this Section, and one member appointed through subsection (A)(4) of this Section shall serve one-year terms;

(2) One member appointed through subsection (A)(1) of this Section, and two members appointed through subsection (A)(4) of this Section shall serve two-year terms;

(3) One member appointed through subsection (A)(1) of this Section, one member appointed through subsection (A)(2) of this Section, one member appointed

through subsection (A)(3) of this Section, and one member appointed through subsection (A)(4) of this Section shall serve three-year terms;

(C) (1) At the expiration of an initial term, all subsequent appointments shall be for a term of three years.

(2) (a) Members may serve two consecutive terms. Any initial Board members may be reappointed to one consecutive term of three years.

(b) Members of the initial Board or subsequent members who have rotated off the Board may be considered for reappointment no sooner than three years from the expiration of their final consecutive term, and may only serve one additional three-year term upon reappointment.

(D) When a vacancy is created by an expired term, or by the removal, resignation, or death of a member:

(1) The seat shall be vacated immediately and shall remain vacant until a new appointment is made;

(2) The vacancy shall be filled under the same nomination process from subsection (A) of this section by which the vacating member was appointed. A new term of three years shall begin with the date the new member is appointed.

(E) The members shall elect by majority vote one member to serve as Chair and one member to serve as Vice Chair for terms of one year. No member may serve more than two consecutive terms as Chair, and no member may serve more than two consecutive terms as Vice Chair. The chair shall be the presiding officer and a full voting member of the board. In the absence of the chair, the vice chair shall exercise the powers of the chair.

(F) Subject to budget appropriations and not to exceed the total annual budget allocations for such costs, members shall be:

(1) Paid fifty dollars per month for months in which the member attends one or more meetings;

(2) Paid one hundred dollars for each full day of training pursuant to LMCO Section 36.76(A)(1).

(G) Board appointees are subject to the Metro Ethics Code as found in Chapter 21 of this Code. Violation of any provision thereof shall be cause for removal under LMCO Section 36.73.

SECTION III: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.72. Qualifications for nomination and membership to Civilian Review & Accountability Board

(A) In order to serve on the Civilian Review & Accountability Board, persons must have resided in Jefferson County for a minimum of 180 days prior to their nomination to join the Board, and must remain continuously domiciled within Jefferson County for the duration of their term.

(B) (1) No current Louisville Metro employees shall be eligible to serve on the Board. A maximum of one former or retired Metro employee who was not previously employed by LMPD may serve at any one time.

(2) No current employees of law enforcement agencies, either sworn or civilian, shall be eligible to serve on the Board.

(3) Retired or former employees of law enforcement agencies, either sworn or civilian, may serve on the Board if three years have passed since their separation from a

law enforcement agency. A maximum of one retired or former employee of a law enforcement agency may serve at any one time.

(4) No family members of current employees of law enforcement agencies shall be eligible to serve on the Board.

(5) No currently-elected officials shall be eligible to serve on the Board. Former elected officials may serve if three years have passed since they last held elective office. A maximum of one former elected official may serve on the Board at any one time.

(C) The eligibility of nominees shall be verified by the Mayor's staff responsible for Metro boards and commissions.

(D) Nominees are subject to a state criminal background check.

SECTION IV: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.73. Removal of Civilian Review & Accountability Board members.

(A) Upon a recommendation by two-thirds vote of the Board members, followed by the concurrence of the Mayor, and the subsequent approval by a majority vote of Metro Council members, any member of the Civilian Review & Accountability Board may be removed for the reasons listed below:

(1) Neglect of duty, including but not limited to a failure to meet the training requirements as established in LMCO Section 36.76;

(2) A demonstrated pattern of incompetence and lack of fitness for the position;

(3) Conviction for a criminal act committed while serving on the Board;

(4) Misconduct, misfeasance, or malfeasance in performing board duties that undermines the credibility of the Board;

(5) A breach of confidentiality in regard to Board activities;

- (6) Violation of the ethics provisions in Chapter 21 of this Code; and
- (7) Missing more than three Board meetings within a twelve-month period.

SECTION V: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.74. Civilian Review & Accountability Board Powers and Duties

The powers and duties of the Civilian Review & Accountability Board are as follows:

(A) Following an oral presentation by the Inspector General of any complaint for which the Inspector General has completed an initial screening under LMCO Section 36.83, the Board shall determine by simple majority vote whether to require the Inspector General to investigate that complaint;

(B) Review the final reports of any investigations completed by the Inspector General;

(C) Review closed internal police investigations into police shooting cases and incidents involving loss of life due to police action; and

(D) Advise the Mayor, Metro Council, and the Chief of Police on matters relating to the quality and adequacy of internal police investigations, or investigations by the Inspector General, and recommend changes in policy, training, procedures, and staff as a result of its reviews.

SECTION VI: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.75. Confidentiality

(A) Board members must sign and adhere to a confidentiality agreement regarding any ongoing investigations and reviews.

(B) The Board chair speaks for the Board and any member who speaks publicly about any ongoing investigation or review by the Inspector General or the Board without prior

written approval of the Chair may be removed through the process established in LMCO Section 36.73.

SECTION VII: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.76. Training for Civilian Review & Accountability Board members

(A) All new board members, or members reappointed after more than three years have passed since their last service, shall complete:

(1) Sixteen hours of training over two days, led by subject matter experts, which includes but is not limited to:

(a) General training on the basic legal and constitutional issues in policing, LMPD units and operations, internal policies and procedures, standard police equipment; and

(b) Specific training on the following:

1. Basic and power handcuffing;
2. Body-worn camera;
3. Collective bargaining agreements;
4. De-escalation;
5. Ethics in law enforcement;
6. Implicit bias;
7. Officers' bill of rights;
8. Response to resistance and use of defensive tactics;
9. Use of force and taser use;
10. Weapons simulation; and

(2) A minimum of twenty-four hours accompanying LMPD officers on patrol in varying patrol divisions, made up of:

(a) A minimum of twelve hours completed during a day shift or a series of day shifts;

(b) A minimum of twelve hours completed during a night shift or series of night shifts.

(B) After their first year of service on the Board, a member may make a request annually of the Board Chair to arrange for that member to accompany LMPD officers on patrol for up to twelve hours.

(C) (1) For those members who make up the initial Civilian Review & Accountability Board, the Criminal Justice Commission will organize the training under this section, which shall be completed within three months of appointment.

(2) After the first Inspector General is appointed under LMCO Section 36.79 and has established an office and staff, the Office of Inspector General shall organize the training under this section in consultation with the Criminal Justice Commission. The Office of Inspector General shall strive to ensure that training topics and methods remain updated and incorporate best practices, and shall consult with LMPD in this regard. For those members appointed to terms after the initial Board members have served, their required training shall be completed within six months of appointment.

SECTION VIII: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.77. Meetings of the Civilian Review & Accountability Board

The Board shall schedule regular monthly meetings. The Board may cancel meetings or schedule special meetings at the call of the chair, as appropriate to satisfy the duties and obligations of the Board. In no event shall the Board meet less frequently than once per quarter.

SECTION IX: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.78. Establishment of the Office of Inspector General.

(A) There is hereby established an Office of Inspector General for Louisville/Jefferson County Metro Government to perform the functions and responsibilities for investigation and review of the Louisville Metro Police Department as established in this subchapter.

(B) The Office of Inspector General shall be separate from any other agency or department of Louisville/Jefferson County Metro Government, except for oversight by the Civilian Review & Accountability Board under LMCO Sections 36.70 to 36.85.

(C) The office shall be provided a budget sufficient to carry out the responsibilities and functions established in this subchapter.

SECTION X: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.79. Appointment and term of Inspector General

(A) A search committee shall be established by the Mayor to seek qualified applicants for the position of Inspector General, and that search shall not be limited by geographical area;

(B) The search committee, which shall include the Chair of the Civilian Review & Accountability Board or the Vice Chair if designated by the Chair, and the President of Metro Council or a member of Metro Council designated by the President, shall interview and select applicants who meet the qualifications established in LMCO Section 36.80.

(C) The Inspector General shall be appointed by the Mayor from a list of three qualified applicants submitted by the search committee. The appointment shall require the approval of Metro Council.

(D) The Inspector General's term of office shall be four years, and the Inspector General may be reappointed to two additional successive terms by the Mayor after consultation with the Civilian Review & Accountability Board, and approval by Metro Council.

(E) The Inspector General shall receive a salary from the established budget for the Office of Inspector General. The salary shall be commensurate to salaries of Louisville Metro Government directors and subject to applicable classification and compensation ordinances and resolutions.

(F) The Inspector General shall be required to take the same oath of office as is required by the Mayor and members of the Metro Council before performing official duties.

(G) The Inspector General is subject to the Metro Ethics Code as found in Chapter 21 of this Code. Violation of any provision thereof shall be cause for removal under LMCO Section 36.81.

(H) If the Inspector General resigns, the Inspector General shall not be employed by any other area of Louisville/Jefferson County Metro Government for the duration of the period that would have constituted the Inspector General's term of office.

SECTION XI: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.80. Qualifications for Inspector General.

The Inspector General is not required to have law enforcement experience, but a person with experience: conducting civil, criminal or factual investigations that involve gathering, analyzing and evaluating evidence; conducting in-depth research and report writing; conducting interviews with witnesses; or training and experience in law enforcement is preferred. Work experience in the legal profession as a licensed attorney, of which two

years are in a role related to criminal, administrative, or civil investigations is also preferred. The Inspector General cannot have been employed by the Louisville Metro Police Department, the Department of Kentucky State Police, a police department within the Commonwealth of Kentucky, or the Sheriff's office of any county within the Commonwealth of Kentucky.

SECTION XII: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.81. Removal of Inspector General; vacancy

(A) Using the procedures under subsection (B) of this section, the Inspector General may only be removed upon a finding of the following grounds:

- (1) Failure to perform the duties outlined in this subchapter;
- (2) Conviction for a criminal act;
- (3) Misconduct, misfeasance, or malfeasance in office that undermines the credibility of the Inspector General or hinders his or her ability to perform official duties;

or

(4) Demonstration of a pattern of incompetence or lack of fitness for the position.

(B) The Inspector General may only be removed upon:

(1) A recommendation by two-thirds vote of the Civilian Review & Accountability Board, followed by the concurrence of the Mayor, and the subsequent approval by a majority vote of Metro Council members; or

(2) A recommendation by the Mayor, followed by the concurrence of two-thirds vote of the Civilian Review & Accountability Board, and the subsequent approval by a majority vote of Metro Council members.

(C) The Inspector General may appeal his or her removal to Jefferson Circuit Court.

(D) When a vacancy is created by an expired term, or by the removal, resignation, or death of an Inspector General, an interim Inspector General shall be appointed by the Mayor within 30 days and approved by Metro Council. If less than one year remains in the term of the outgoing Inspector General, the interim appointee shall serve until the end of the term. If one year or more remains in the term of the outgoing Inspector General, the interim appointee shall serve for six months or until a new Inspector General is found under the process established in LMCO Section 36.79, whichever period of time is shorter.

SECTION XIII: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.82. Powers and duties of Inspector General

(A) The Inspector General:

(1) Shall investigate complaints as determined under LMCO Section 36.83;

(2) May examine patterns and practices, and review policies, procedures, and operations within LMPD under LMCO Section 36.84; and

(3) May provide recommendations on improving operations to the Chief of Police, the Mayor, and Metro Council.

(B) (1) The Inspector General shall establish the internal organization of the Office of Inspector General and shall create such divisions as deemed necessary to perform the functions, powers, and duties of the office. The Inspector General shall have the power to appoint, employ, and remove personnel as deemed necessary for the efficient and effective administration of the affairs of the office, and to contract with outside experts and consultants as needed.

(2) The Inspector General and all personnel within the Office of the Inspector General shall complete:

(a) The same sixteen hours of training over two days that is required of Civilian Review & Accountability Board members under LMCO 36.74(A)(1); and

(b) A minimum of forty hours accompanying on-duty LMPD personnel, made up of:

1. A minimum of twenty-four hours completed in varying patrol areas during two night shifts or a series of night shifts;

2. A minimum of twelve hours completed in varying patrol areas during one day shift or a series of day shifts; and

3. A minimum of four hours completed with an investigative unit.

(C) The Inspector General shall adopt rules and regulations that guide the functions and processes conducted by the Office of Inspector General that are not inconsistent with state or local laws, Louisville Metro Government Personnel Policies, or LMPD collective bargaining agreements.

(D) The Inspector General shall conduct direct community outreach and take appropriate steps to build public awareness of the Office of Inspector General, and of all procedures established by the Inspector General for receiving and investigating complaints.

(E) (1) To the extent permissible by law, all officers and employees of Louisville/Jefferson County Metro Government shall cooperate with and furnish the Office of Inspector General unrestricted access to employees, documents, records, and any other information necessary to assist in carrying out duties under this subchapter.

(2) The Inspector General shall report to a Metro officer's or employee's hiring authority, in writing, any failure by an officer or employee to cooperate with the Office of Inspector General's requests. Disciplinary action shall be taken in accordance with personnel policies by the appointing authority and under applicable law.

(F) To the extent as may be authorized by state law, the Inspector General shall have the power to issue subpoenas, administer oaths, and compel testimony in conducting investigations, whether based on complaints or as part of a non-complaint investigation or review.

(G) Subject to the duty to report under Section 36.85, the Office of Inspector General shall conduct all investigations confidentially and shall not publicly disclose any information received during an investigation that is considered proprietary or confidential in nature under any local, state, or federal law or regulation.

SECTION XIV: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.83. Investigations of complaints by the Inspector General

(A) Pursuant to paragraph (B) of this section, the Inspector General shall investigate complaints involving any interactions between any member of the Louisville Metro Police Department and any member of the public that involve the following types of conduct by members of LMPD:

- (1) The serious injury or death of any individual in police custody;
- (2) The serious injury or death of any individual resulting from police action or inaction;
- (3) Abuse of police authority;
- (4) Excessive use of force;

- (5) Discrimination in the provision of police services; or
- (6) Sexual misconduct.

(B) (1) The Inspector General shall obtain complaints, either sworn or unsworn, on conduct specified in paragraph (A) of this section from sources including but not limited to the following:

- (a) The LMPD Professional Standards Unit and the Public Integrity Unit;
- (b) The anonymous Ethics Tip Line established in LMCO Chapter 39;
- (c) Office of Internal Audit of Louisville/Jefferson County Metro Government;
- (d) The Police Ombudsman at the Human Relations Commission; or
- (e) Direct reference of complaints to the Office of Inspector General or members of the Civilian Review & Accountability Board from citizens or from other Metro offices and departments.

(2) The Inspector General shall establish a process to evaluate the merits of a complaint, conduct an initial screening and prioritization of complaints, and present recommendations to the Civilian Review & Accountability Board regarding whether a complaint merits a full investigation pursuant to this Section. Beyond any preliminary investigation necessary to evaluate the merits of a complaint, the Inspector General shall not continue to investigate complaints without authorization from the Board.

(C) Upon the conclusion of a complaint investigation, the Inspector General shall have the authority to make recommendations to and share investigative findings with the Chief of Police, the Commonwealth Attorney, the County Attorney, the Federal Bureau of Investigation, the Internal Auditor, the Metro Ethics Commission, the Civilian Review &

Accountability Board, or other appropriate bodies based on the results of the complaint investigation and the judgment of the Inspector General.

SECTION XV: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.84. Non-complaint reviews and investigations by the Inspector General.

(A) Pursuant to the powers established in LMCO Section 36.82, the Inspector General may examine and review operations within LMPD without a vote by the Civilian Review & Accountability Board.

(B) The Inspector General shall inform the Civilian Review & Accountability Board chair when initiating such reviews and examinations, and shall provide oral updates to the Civilian Review & Accountability Board as directed by the chair.

SECTION XVI: A new section of Chapter 36 of the LMCO is created as follows:

Section 36.85. Reports by Civilian Review & Accountability Board and by Inspector General

(A) The Civilian Review & Accountability Board shall issue quarterly written reports to the public, the Mayor, and Metro Council. The reports shall include, but are not limited to, descriptions of the Inspector General's efforts at community outreach, non-identifying statistical information regarding reviews and investigations, and the Board's evaluation of the work of the Office of Inspector General.

(B) The Inspector General shall issue the following reports:

(1) With respect to any ongoing investigation, review, or examination, whether based upon a complaint or not, the Inspector General shall provide preliminary reports to the Civilian Review & Accountability Board upon the request of the Board chair;

(2) To the extent authorized by law, the Inspector General shall make publicly available a final written report upon the conclusion of each investigation. The reports shall include any recommendations to enhance the promotion of accountability and integrity within LMPD; and

(3) The Office of Inspector General shall prepare and submit an annual report to the Mayor and Metro Council within thirty days after the end of each calendar year concerning the Office's completed activities, investigations, major observations, recommendations, and other actions completed during the preceding year.

SECTION XVII: The Citizens Commission on Police Accountability created pursuant to LMCO 36.50 and 36.51 is hereby abolished. LMCO Sections 36.50 and 36.51 are hereby repealed in their entirety. All authority previously vested in the Citizens Commission on Police Accountability shall now be vested in the Civilian Review & Accountability Board created pursuant to Section I of this Ordinance. Any records of the Citizens Commission on Police Accountability shall be transferred to the Civilian Review & Accountability Board.

SECTION XVIII: This Ordinance shall take effect upon its passage and approval.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____

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