



ARLINGTON BRANCH #7047

NAACP

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At-Large Executive Committee Members

Karen Nightengale, James Younger, Esq.,
S. Symone Walker, Esq.

June 10, 2021 -12:00 p.m.

Arlington County Board
The Honorable Matt de Ferranti, Chair
The Honorable Katie Cristol, Vice Chair
The Honorable Christian Dorsey, Member
The Honorable Takis P. Karantonis, Member
The Honorable Libby Garvey, Member
and
Arlington County Manager Mark Schwartz

2100 Clarendon Blvd Ste 300
Arlington, VA 22201

RE: Executive Summary – Arlington Branch NAACP #7047 and Arlington for Justice Markup of ORDINANCE to amend the Code of Arlington County, Virginia, to add a new Chapter 69 establishing a Law Enforcement Civilian Oversight 1 Board and Independent Policing Auditor

Dear Board members and County Manager

Last fall, the Virginia General Assembly concluded that a “law-enforcement oversight body” is the heart of modern policing and a prerequisite to police-community collaboration in criminal justice reform. It therefore entrusted every Virginia community with the authority to create such a body with the power to conduct independent investigations of allegations of police misconduct and of policing patterns and practices, and to make binding disciplinary determinations after consultation with the police. Va. Code. Ann. §9.1-601 (2020) (“Virginia Oversight Act”). After lengthy and thorough study, Arlington County’s Police Practices Group followed the General Assembly’s lead and expressly recommended an oversight board with these very powers. **The NAACP Arlington Branch #7047 and its Criminal Justice Committee in collaboration with Arlington for Justice** support the strong, robust civilian oversight that the General Assembly presumed, and the PPG recommended.

Sadly, the draft ordinance proposed by County Manager Mark Schwarz rejects the conclusions of both the General Assembly and the County’s own PPG in favor of a neutered civilian board that can only “review” completed ACPD self-investigations with sharply limited information, and then recommend at most that the ACPD investigate itself again. While a restricted “review” or advisory board may be acceptable to other

Virginia communities, it is not the promise or the future of Arlington. Police should not fear or resist civilian accountability or input. Instead, **our** Police Department and County Manager should embrace it as the bright future of community policing. Together, community civilians and police personnel can transform the culture of policing and shine as a model for other jurisdictions and states where accountability, truly independent investigatory roles, in-time information sharing, opportunities for consultation and collaboration between board and police, and cross-pollination of ideas, wisdom, and experiences can create strong community-police bonds.

The General Assembly of the state that was once the home of the Confederate capitol believes today that Virginia citizens can be trusted to conduct objective, fair, and effective law-enforcement oversight. Arlington County should be the last Virginia community to deny that trust. Giving the community a voice in how it is policed and in what makes them feel safe, valued, and heard is the very essence of Arlington's mission statement.

At the request of the County Board, and after consulting with diverse representatives of the Arlington community, we have therefore jointly revised those parts of the draft ordinance that contradict the Oversight Act passed by the General Assembly and the recommendations of the County's own PPG, and we carefully preserved the rest. The attached revision will allow for true accountability and a real opportunity to build trust with community members most impacted by police interactions in Arlington. We have summarized the key revisions below.

1. We have adopted the name for the board assigned by both the General Assembly and the PPG: “**civilian oversight board.**” Symbolically our diverse community coalition felt that it was important to signal to the public that the County is indeed embracing the full statutory authority granted to it by accepting the concept of “oversight” embedded in the Oversight Act.
2. The revision confers precisely the independent investigatory power authorized by the General Assembly (and recommended by the PPG) over selected allegations of police conduct, at the same time it encourages the Oversight Board to work with the ACPD to develop criteria for deciding when to send complaints to the ACPD for investigation.
3. The revision fulfills the draft ordinance's promise of “full access” by the Oversight Board to information it needs to conduct its investigations and evaluations, by removing a battery of unnecessary limitations, while retaining the limitation for information that might compromise a pending criminal investigation or proceeding, as well as all of the strong confidentiality protections contained in the draft ordinance.
4. The revision reinforces the Oversight Board's full access to necessary information by restoring to it the precise subpoena authority conferred by the General Assembly and recommended by the PPG, subject to prior consultation with the County Manager in the reasonable expectation that information disputes will be collaboratively resolved without judicial intervention. In the rare case in which such resolution proves impossible, the revised ordinance preserves the right of the County to move to quash or modify a subpoena.
5. The revision restores the power of the Oversight Board under the Oversight Act to make binding disciplinary determinations, but again only after prior notice to and consultation with the Police Chief and after considering his written rationale for rejecting its preliminary disciplinary determination. As also provided by statute, the officer still retains his/her grievance rights to challenge the decision.

6. The revision ensures independence by placing the control and direction of the Independent Policing Auditor under the Oversight Board and removing that position from the control and evaluation by the County Manager. It also restores the authority the General Assembly gave oversight boards to retain independent legal counsel, sparing the County Attorney the untenable conflict of interest presented by his serving as legal advisor to the Oversight Board at the same time he represents and advises the ACPD.
7. The revision aligns the training requirements for Oversight Board members with other boards and commissions that serve the County and provides for collaboration between the Board, the ACPD, and non-profit organizations involved in policing research and reform in developing additional training materials.
8. Finally, as noted above, the revised ordinance provides in detail for numerous opportunities for collaboration and dialogue between the Oversight Board and the ACPD and its Chief, instead of prematurely freezing them into a one-time MOU, in the reasonable expectation that they will increasingly work together as experience builds trust.

Together, these revisions align the language of the ordinance more closely with the Oversight Act passed by the General Assembly in 2020 and the recommendations of the PPG, and provide the best hope of a truly collaborative partnership between the community, its Board, and its ACPD, going forward.

Sincerely,

Julius D. "J.D." Spain, Sr., President, Arlington Branch NAACP
Michelle Woolley, Esq., Arlington for Justice, Steering Committee Representative
Kent D. Carter, 1st Vice President and Criminal Justice Committee Chair, Arlington Branch NAACP
Michael Hemminger, 3rd Vice President, Arlington Branch NAACP
Matt Rogers, Vice Chair, Criminal Justice Committee, Arlington Branch NAACP
Wanda Younger, Secretary, Arlington Branch NAACP
Peter Raven-Hansen, Esq.
Heather Kelly, Esq.

Cc: Deputy County Manager, Chief Race and Equity Officer, Samia Byrd
Northern Virginia Delegation to Virginia's General Assembly
Commonwealth's Attorney for Arlington County and the City of Falls Church, The Honorable Parisa Dehghani-Tafti
Arlington Public Defender, Mr. Bradley Haywood
Police Practices Group, Civilian Review Board Subcommittee Members
Arlington Branch NAACP, Executive Committee
Arlington for Justice, Executive Committee
Arlington Branch NAACP, Active Members

6-10-21 version (Arlington Branch NAACP & Arlington for Justice)

ORDINANCE to amend the Code of Arlington County, Virginia, to add a new Chapter 69 establishing a Law Enforcement Civilian Oversight¹ Board and Independent Policing Auditor

BE IT ORDAINED:

1. The Code of Arlington County, Virginia, is amended to add a new Chapter 69, effective July 1, 2021, as follows:

ARTICLE I. LAW ENFORCEMENT CIVILIAN OVERSIGHT BOARD

§ 69-1. Law Enforcement Civilian Oversight Review Board

- (a) There is hereby established a public body to be known as the Law Enforcement Civilian Oversight Board (“Oversight Board”), the purposes, duties, and authorities of which shall be as set forth herein.
- (b) The Oversight Board is a public body appointed by the County Board to oversee the Arlington County Police Department (“ACPD”), to advise and to perform delegated functions of the County Board and as otherwise set forth in this Ordinance. It shall not be able to bring suit or to be sued in its own name.

§ 69-2. Oversight Board Purpose and Scope

- (a) Purpose: The purpose of the Oversight Board is to effectively oversee law enforcement in the County, and to increase and maintain trust between and among the ACPD and the public. The Oversight Board shall:
 - i. for certain matters defined below, investigate complaints and incidents, make findings concerning incidents it investigates, and make binding disciplinary determinations of County Police Department officers and civilian employees, after consultation with the Chief of the ACPD² (“incident investigations”);
 - ii. Receive, investigate or refer civilian complaints made to the Oversight Board;
 - iii. for certain matters defined below, the Oversight Board may, in its discretion, review investigations completed and disciplinary determinations proposed by the ACPD, including internal investigations of civilians and others employed in or assigned to the ACPD, issue findings regarding the accuracy, completeness, and

¹ The name of the board is drawn from Va. Code Ann. §9.1-507 (hereinafter “Virginia Oversight Act”). This name more accurately reflects even the limited Board duties proposed by the advertised ordinance, which, in addition to reviewing completed investigations, included “evaluat[ing] policing practices, policies, procedures, and their implementation.”

² Virginia Oversight Act §9.1-601(C)(3). All revisions herein to the advertised ordinance are consistent with the Virginia Oversight Act and the recommendations of the Police Practices Group Report (“PPG Report”). All language shown in bold is quoted directly from the Virginia Oversight Act and/or the PPG Report, except that “ACPD,” “the County,” or the “Police Chief” have been substituted for “locality” or “law enforcement agency” for clarity. The revision otherwise endeavors to preserve as much of the language of the advertised ordinance as is consistent with the same authorities.

impartiality of such investigations and issue findings on the sufficiency of any discipline resulting from such investigations. (“ACPD investigation review”);

- iv. make binding disciplinary determinations after consultation with the Chief of the ACPD³
 - v. provide timely, fair, and objective investigation, review, and evaluation of policing policies, practices, and procedures of the ACPD, and make recommendations regarding changes to such policies, practices, and procedures⁴ it determines is necessary to maintain and promote non-discriminatory policing (“pattern and practice investigation and evaluation”);
 - vi. use subpoena power; and
 - vii. ensure the protection of all communities through findings, recommended actions and reform, including in the criminal justice system; and recommend strategies for effectively implementing identified reforms.
- (b) Scope: The Oversight Board shall have the authority to receive citizen complaints and to investigate complaints and incidents involving the ACPD for certain matters defined below; review completed ACPD investigations; and make binding disciplinary determinations after consultation with the Chief of Police; evaluate policing practices, policies, procedures, and outcomes in Arlington; and disclose findings, recommendations, and disciplinary determinations to the public, the County Board, the County Manager, the ACPD, and other public agencies regarding its duties, investigations, policing practices, policies and procedures in Arlington County. The Oversight Board is hereby authorized to perform the duties hereinafter prescribed, and the ACPD and County Manager shall fully and timely cooperate with the Oversight Board. The Oversight Board shall adopt and make public such rules and procedures as it deems appropriate to carry out its functions under this ordinance. The office of Independent Policing Auditor is hereby established, which is hired by and reports to the Oversight Board.
- (c) In order to carry out their respective duties, the Oversight Board and the Office of Independent Policing Auditor shall be provided an annual budget subject to appropriation by County Board, and shall expend the appropriated funds consistent with:
- i. the responsibilities of the Oversight Board and of the Office of the Independent Policing Auditor as provided for in this ordinance.
 - ii. the budget and appropriation approved by County Board; and
 - iii. County procurement and expenditure regulations and practices.
- (d) Oversight Board Reports: The Oversight Board shall produce public reports regarding the work of the Oversight Board and disseminate such reports in hardcopy and online, including, but not limited to:
- i. a written report to the County Board by September 1 of each fiscal year of its

³ *Id.* §9.1-601(C)(3) & (5).

⁴ *Id.* §9.1-601(C)(4).

activities for the prior fiscal year (ending June 30) under the provisions of this chapter, including its recommendations and evaluations, its assessment of cooperation between the Oversight Board and the ACPD and ways to improve such cooperation, and any after action assessments deemed necessary to facilitate the implementation of best practices, social justice principles and effective, compassionate policing of marginalized communities.

- ii. a written report after each completed investigation or review, which shall not include any Personally Identifiable Information, or criminal or juvenile information prohibited from being disclosed by Virginia State or Federal Law. The reports of investigation or review by the Oversight Board shall be provided in full to the public.

(e) Other Duties: Undertake such other tasks as the Oversight Board determines may be reasonably necessary for it to effectuate its authorized duties as defined in this ordinance.

§ 69-3. Oversight Board Member Requirements and Term of Office

(a) The Oversight Board shall be composed of seven (7) voting members appointed by the County Board, which shall endeavor to create a fair, objective, and independent body that represents the economic, geographic, and demographic diversity of the County.⁵ They shall include:⁶

- i. at least three (3) members who come from historically, racially, or socially marginalized communities that have commonly experienced disparate policing in the Commonwealth of Virginia: and
- ii. at least two (2) members who represents an organization, office, or agency that seeks racial or social justice, the protection of civil rights, or otherwise advocates on behalf of historically, racially, or socially marginalized communities, particularly communities that may have experienced disparate policing.
- iii. at least two (2) non-voting members may be selected by the Oversight Board, who shall have experience in law enforcement, but who shall not be a current employee of, or an immediate family member of, a current employee of any law enforcement agency or Arlington County government and shall not have served in law enforcement at any time with Arlington County. ACPD officer(s) may be tasked to provide expertise and training to the Oversight Board, at the request of the Oversight Board and in the discretion of the ACPD Chief.

(b) The seven (7) voting members of the Oversight Board shall be residents of the County and shall demonstrate fairness, integrity and objectivity. They shall be chosen by the County Board following a public advertisement for applications, including a widely distributed press release announcing the request for applications.

(c) No voting or non-voting member shall be a current or former County employee, a current or former County elected official, a current candidate for public office, a current

⁵ *Id.* §9.1-601(B).

⁶ The following two sub-provisions were adapted from Alexandria Ordinance No. 5337, §2-4-222(b) to implement the Virginia Oversight Act's requirement for diversity. Va. Code Ann. §9.1-601(B).

employee of any law enforcement agency, or an immediate family member of any of the preceding.

- (d) Except as to the initial Oversight Board, members shall be appointed for terms of four years each. Oversight Board members' terms shall be staggered. To that end, the County Board shall appoint four (4) voting members of the inaugural Oversight Board to 18-month terms and three (3) voting members to four-year terms. Initial non-voting members shall be appointed to four-year terms. An Oversight Board member may be appointed to no more than two consecutive four-year terms; however, members initially appointed to an 18-month term shall be eligible to serve two consecutive four-year terms after the conclusion of the initial 18-month term.

§ 69-4. Conflicts of Interest and Confidentiality

- (a) The Oversight 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. and shall file the annual disclosure form specified thereunder for local officials and each Oversight Board member shall upon appointment and each year thereafter sign an acknowledgment of their obligations to preserve confidentiality as provided in this ordinance, and policies of the Oversight Board.
- (b) Except as included in the Oversight Board Reports as hereafter defined and to the extent permissible 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. Office of Professional Responsibility investigative files;
 - ii. disciplinary actions, memos, and reports that the member receives during service on the Oversight Board;
 - iii. statements of a police officer, or ACPD employee, who was required by the ACPD to give a statement;
 - iv. criminal investigative files;
 - v. identities of confidential informants or victims; and
 - vi. information concerning juveniles.
- (c) All original records provided to the Oversight Board by the ACPD shall remain the official ACPD records.

§ 69-5. Quorum, Voting, and Meetings

- (a) The Oversight Board shall comply with all requirements of the Virginia Freedom of Information Act pertaining to disclosure of public records and the conduct of public meetings including the requirement that all meetings shall be open to the public except

under circumstances when the topic is authorized by the law to be discussed in a closed meeting.

- (b) The Oversight Board 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 ordinance. Such bylaws shall be subject to public notice and public hearing before adoption by the Oversight Board.
- (c) The Oversight Board shall meet as often as necessary to conduct its business, but no less frequently than four (4) times per calendar year, or as otherwise determined by the Oversight Board Chair.
- (d) The Oversight Board may take any action by motion or resolution upon an affirmative majority vote of those members present and voting, provided a quorum of at least five (5) out of seven (7) voting members are present.
- (e) The Oversight Board may meet and vote virtually. Non-voting members may not attend closed sessions of the Oversight Board.
- (f) The Oversight Board shall keep minutes of its Oversight 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.

§ 69-6. Support of Oversight Board

- (a) Oversight Board Staff
 - i. After consultation with the County Manager concerning recruiting of candidates for Independent Policing Auditor, and with advertising and recruitment assistance by the County, the Oversight Board shall interview and identify at least two (2) candidates to the County Board, which shall select one candidate as the Independent Policing Auditor.
 - ii. The Independent Policing Auditor shall staff the Oversight Board and coordinate the Oversight Board's administrative functions and report to the Oversight Board and, as necessary, to the County Board.
 - iii. The Independent Policing Auditor shall hire such staff as shall be necessary to conduct the assigned duties of the Oversight Board, subject to appropriation of funds therefore by the County Board. Such staff functions may be performed by

consultants, part-time or full- time employees.

- iv. The Oversight Board may seek the advice of the County Attorney and it may retain its own independent legal counsel to advise and/or represent it, in all cases, hearings, controversies, or matters involving the interests of the Oversight Board. Such counsel shall be paid from funds appropriated by the County.⁷

(b) Support from the County

- i. A website shall be established for the Oversight Board hosted on the County’s website. The Oversight Board shall determine what is posted on the Oversight Board’s website to the extent it complies with all applicable Federal, State, and local laws.
- ii. All public meetings of the Oversight Board shall be videotaped and made available to the public on the County’s website.
- iii. The Oversight Board members shall be provided with a County email address to be used exclusively for Oversight Board-related matters.
- iv. The County will perform such activities to ensure compliance with the Virginia Public Records Act.

§ 69-7. Oversight Board Training

- (a) Such training as required by all other county commissions and boards, such as the Conflicts of Interest Act and Virginia Freedom of Information Act shall be provided to the Commission. Additional training opportunities may be developed in coordination with the ACPD, and non-profit organizations involved in policing research and reform. The ACPD may make voluntary training opportunities available throughout each year, such training to be mandatory only at the discretion of a majority vote of the Oversight Board,

§ 69-8. Access to County Police Department Records

- (a) Subject to such limitations as may be imposed thereon by this Chapter, the Oversight Board and the Independent Policing Auditor shall be provided full and timely access to all County and ACPD information, reports, files, records, witnesses, and other information related to the Oversight Board’s duties enumerated herein, including but not limited to, ACPD proposed discipline, an incident investigation(s), ACPD investigation review(s), or pattern and practice investigation(s) and evaluation(s) by the Oversight Board, including but not limited to:
 - i. Personnel records, contact cards, memos and all other information that otherwise would be part of supervisory, Office of Professional Accountability or command staff files;

⁷ *Id.* §9.1-601(G).

- ii. Audio and video data, including but not limited to photographs, surveillance footage, footage from body cameras, dashboard cameras, and CCTV and other such technologies hereafter adopted by ACPD or the County.
 - iii. As used in this ordinance, “information” or “records” includes the above and includes, but is not limited, to data, written records, electronic records, Human Resources records, notes, diagrams, photographs, physical and electronic evidence, after action reports, initial notification reports, scanner and 9-11 communications, press reports if collected by the County, transcripts of the same and other such information that is reasonably calculated to lead to the information needed to perform the duties and oversight functions enumerated herein.
- (b) All records and information requested by the Oversight Board shall be provided within five (5) business days. If that is not reasonably possible, the ACPD shall explain in writing the reason(s) it cannot comply on or before the fifth day and shall be granted an additional seven (7) days to comply. All records and information shall be produced in a manner and format easily accessible by the Oversight Board and without cost.
- (c) The Oversight Board may make audio-video data public after consulting with ACPD, and at its discretion, with the County Attorney or an attorney retained by the Oversight Board, concerning the desirability of first redacting any part of such data.
- (d) The ACPD shall timely comply with requests made by the Oversight Board for, and shall timely forward on a quarterly basis, data such as police stops by location and race, citations, arrests made by location and race, search warrants executed by neighborhood and race of the homeowner or tenant or suspect, the number and type of discipline issued to law enforcement or civilian employees to include race and infraction and method of discipline (including verbal and informal counseling or contact cards).
- (e) Records containing confidential information such as information protected by law, personally identifiable information not contained in a supervisory or command staff file, information that may reveal the identity of a confidential source, information that could endanger the life or physical safety of any individual, information that would disclose techniques, procedures, or guidelines used in criminal investigations or prosecutions that if revealed may reasonably be expected to risk the circumvention of the law, or information eligible for exemption from the mandatory disclosure requirements under the Virginia Freedom of Information Act, shall be held confidential and secured in a format and manner so as to prevent inadvertent disclosure. The County Manager shall, through the Department of Technology Services, provide such assistance as necessary to establish an information system to electronically secure such records.
- (f) The ACPD may, in its discretion, elect not to immediately provide to the Oversight Board information that is related to a pending criminal investigation or judicial proceeding, if disclosure of that information would compromise said investigation or proceeding through revelation of process, evidence, methods, scope, or other factors, except that the ACPD shall provide such information:
- i. after such criminal investigation is completed, or sixty (60) days after the

commencement of such investigation, whichever is sooner, unless Police Department makes showing of good cause in writing to the Oversight Board for an extension of such time;

ii. after such criminal judicial proceeding is withdrawn or completed.

(g) If, after making a good faith effort to obtain, voluntarily, the attendance of witnesses and the production of books, papers, and other information necessary to perform its as provided by this ordinance, and after consultation with the County Manager, the Oversight Board is unable to obtain such attendance or production, the Oversight Board may, by majority vote of a quorum of the Oversight Board, direct its counsel to apply to the Circuit Court for Arlington County for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence. Any person so subpoenaed may apply to the court that issued such subpoena to quash it.⁸

§ 69-9. Oversight Board Duties

(a) Oversight Board Readiness Resolution

- i. Within thirty (30) days after the initial Oversight Board members are appointed by the County Board, the Oversight Board shall meet to establish its practices and procedures, and consult with the County Manager regarding the recruitment of candidates for Independent Policing Auditor.
- ii. Within sixty (60) days of passing such a resolution, the Oversight Board shall identify and report to the County Board three candidates for Independent Policing Auditor.
- iii. Within thirty days of the Oversight Board's report to the County Manager identifying candidates for Independent Policing Auditor, the Manager shall hire one of the identified candidates, unless for good cause shown, he requests an extension of time to do so.

(b) Complaint Intake

- i. The Oversight Board in conjunction with the Independent Police Auditor will develop and administer a process for receiving and investigating community or citizen complaints ("citizen complaints") regarding conduct of the ACPD law enforcement officers or civilian employees and a process for referring such complaints, if it deems appropriate, to the ACPD for the initial investigation.⁹
- ii. The Oversight Board shall establish rules and procedures governing the intake, investigation, and resolution of citizen complaints it receives. Those rules and procedures shall ensure a fair, objective and timely investigation and resolution.

⁸ *Id.* §9.1-601(D); PPG Report at 22.

⁹ PPG Report at 23.

- iii. Complaints filed with the Oversight Board may be submitted using a form provided by the Oversight 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 Oversight Board.
 - iv. Information about the process for filing a complaint with the Oversight Board, complaint forms, and general information about the Oversight Board and its purpose and scope shall be made available online and at the office of the Independent Policing Auditor, the ACPD, the County’s Office of Human Rights, as well as other locations deemed effective for making such forms and information widely available. Such information, complaint forms, and general information about the Oversight Board and its purpose and scope shall be made readily available in English, Spanish, and in any additional language as requested by an individual submitting a complaint to the Oversight Board. The County Manager shall be responsible for ensuring compliance with this section.
- (c) Investigation of Complaints and Incidents (“Incident Investigation”)
- i. The Oversight Board may, with the Independent Policing Auditor’s assistance, investigate complaints and incidents:
 - 1) involving **the use of force by a law enforcement officer**, including incidents in which a police officer deploys a canine, 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;
 - 2) resulting in **death, or serious injury to any person held in custody**
 - 3) **serious abuse of authority or misconduct**
 - 4) **allegedly discriminatory stops, or**
 - 5) **involving other serious breaches of departmental and professional standards.**¹⁰
 - ii. The Oversight Board may, at its discretion, refer complaints it receives to the ACPD for investigation by the ACPD. The Oversight Board may, after consultation with the ACPD, establish criteria for determining which complaints or incidents involving the matters identified in §69-9(c)(i), it will investigate, and which complaints it will forward to the ACPD for investigation by the ACPD.
 - iii. The Oversight Board may hold a public hearing(s) on investigation and make findings. At the conclusion of the investigation and any public hearing, the

¹⁰ *Id.* §9.1-601(C)(4). The PPG Report also recommended full investigative authority without subject matter limitation. PPG Report at 22.

Oversight Board may take the following actions:

- 1) Dismiss a complaint if, based on the file and report of investigation and any findings it makes, it determines that the complaint lacks merit, or the incident was justified, and provide a written summary to the complainant and the ACPD.
- 2) Refer the complaint or incident to the Commonwealth's Attorney for Arlington County.
- 3) Make and provide to the Police Chief findings and a preliminary disciplinary determination (**which may include, but not limited to, a letter of reprimand, suspension without pay, suspension with pay, demotion within the department, reassignment within the department, termination, involuntary restitution, or mediation**),¹¹ based on those findings.
- 4) **Make a binding disciplinary determination (which may include, but not limited to, a letter of reprimand, suspension without pay, suspension with pay, demotion within the department, reassignment within the department, termination, involuntary restitution, or mediation)**,¹² or decline to make any disciplinary determination, after considering any reason the Police Chief has provided in writing within thirty (30) days of the Oversight Board's preliminary disciplinary determination for declining to implement such determination.
- 5) Employees subject to a binding disciplinary decision by the Oversight Board shall have full grievance rights as afforded by County administrative regulations.

(d) Review of ACPD Incident Investigations (ACPD Investigation Review)

- i. After the Oversight Board has referred a citizen complaint to the ACPD for investigation, the ACPD shall report the findings, recommendations, and disciplinary determination, if any, related to such complaint to the Oversight Board within sixty (60) days. The Oversight Board may then review such findings, recommendations, and disciplinary determination for **accuracy, completeness, and impartiality and the sufficiency of any discipline resulting from such investigations**.¹³ The Oversight Board may develop criteria for selecting ACPD complaint-related findings, recommendations, and disciplinary determinations, if

¹¹Virginia Oversight Act §9.1-601(C)(3).

¹² *Id.*; PPG Report at 23 (after consultation with the Police Chief, Board shall have the authority "to make binding disciplinary determinations for ACPD officers who have been found to have committed serious breaches of ACPD procedures or professional standards").

¹³ Virginia Oversight Act §9.1-601(C)(5) (providing for oversight board review of "all investigations conducted internally by law-enforcement agencies serving under the authority of the locality, including internal investigations of civilians employed by such law-enforcement agencies") (emphasis added); PPG Report at 22 (including the authority to recommend changes to the ACPD report "before it is issued").

any, for review.

- ii. After completing a review of the ACPD's investigation of a citizen complaint or incident, including any public hearing the Oversight Board may conduct, the Oversight Board may:
 - 1) concur with all or some of the ACPD's findings and determinations detailed in its investigation report;
 - 2) advise the County Board, the County Manager, and/or the Police Chief that the ACPD's findings are not supported by the information provided by the Police Chief or otherwise available to the Oversight Board and recommend further review and consideration by the Police Chief;
 - 3) advise the County Board, the County Manager, and the Police Chief that, in the Oversight Board's judgment, the investigation is incomplete and conduct an independent investigation of the matter pursuant to §69-9(c).

(e) Oversight Board Policy Recommendations and Duties (including Pattern and Practice Investigation and Evaluation)

- i. The Oversight Board shall have the following duties regarding review of police policy and procedure:
 - 1) review, evaluate, and recommend changes to, existing and proposed ACPD administrative directives, including all rules, policies, and procedures which direct the operation of the ACPD and its employees including the implementation of such directives, rules, policies and procedures;¹⁴
 - 2) review and evaluate reports issued by the ACPD related to policing practices, policies, procedures, and outcomes;
 - 3) receive, review and evaluate the annual budget and expenditures of the ACPD and make budgetary recommendations;¹⁵
 - 4) recommend legislation, policy changes and other actions related to duties of the Oversight Board to the County Board, the County Manager, the ACPD Department, and other public agencies;¹⁶
 - 5) conduct community outreach related to the review and reform of policing practices, policies and procedures in the County and the work of the Oversight Board.

¹⁴ Virginia Oversight Act §9.1-601(C)(4) (“all policies, practices, and procedures of law-enforcement agencies serving under the authority of the locality”) (emphasis added).

¹⁵ *Id.* §9.1-601(C)(6).

¹⁶ *Id.* §9.1-601(C)(4)

- ii. **The Oversight Board may recommend changes to policies or procedures** to the County Board, the County Manager, and/or the ACPD.¹⁷ The Oversight Board shall present in writing its recommendations and any findings with supporting rationale to the County Board, the County Manager, and the ACPD within thirty (30) days from the date the Oversight Board adopts its recommendations and include such recommendations and rationale in its reports to the public, including hard copy and online.
- iii. **If the ACPD declines to implement a change recommended by the Oversight Board, the ACPD shall**, within thirty (30) days of the Oversight Board's recommendation, **provide a written record to the County Board, the County Manager, the Oversight Board, and the public of its rationale for declining to implement the Oversight Board's recommendation.**¹⁸

(e) The Oversight Board shall advise the County Manager on the annual evaluation of the Independent Policing Auditor.

§ 69-10. Exclusions

- (a) Complaints involving any incident or complaint that occurred more than two (2) years before the filing of the complaint with the Oversight Board or the County Police Department; except that the Oversight Board shall have full access to records of any such incident or complaint that it deems relevant to any investigation or evaluation it is authorized to conduct pursuant to §§ 69-9(c) & (d). Investigations related to pattern and practice allegations are not subject to this exclusion.
- (b) Any financial management related issue.
- (c) Any other claim outside the scope of the Oversight Board's authority as provided for by this Chapter or applicable law.

§ 69-11. Independent Policing Auditor

- (a) Consistent with §69-6(a)(i), the Office of Policing Auditor is hereby created. The Oversight Board shall determine the terms and conditions of such appointment set forth in a position description, such position description to be prepared by Oversight Board in consultation with the County Department of Human Resources.
- (b) The Independent Policing Auditor shall be provided office space by the County, but such office space shall not be housed in any ACPD facility. The County Board shall receive the recommendations of, the Oversight Board regarding the Oversight Board's evaluation of the Independent Policing Auditor's performance. The Independent Auditor may subject to termination by two thirds vote of the Oversight Board, such recommendation to be forwarded to the County Board for approval.

¹⁷ *Id.* §9.1-601(C)(4).

¹⁸ *Id.*

- (c) Such employee is considered an employee of the County Board, not subject to evaluation or supervision by the County Manager and is exempt from Administrative Regulation 2.7 or successive regulations.

§ 69-12 Independent Policing Auditor Duties and Responsibilities

The Independent Policing Auditor shall:

- (a) provide the necessary administrative, investigative, and policy support for the Oversight Board, as well as assist the Oversight Board with achieving its purpose and duties enumerated herein;
- (b) assist the Oversight Board in conducting investigations of citizen complaints or incidents, review of ACPD investigations and any ensuing discipline, and other matters defined in this ordinance.
- (c) hire and supervise staff in accordance with existing County Administrative Regulations and Human Resources procedures, subject to the budget and appropriation of funds;
- (d) assist the Oversight Board in investigating, reviewing, and evaluating the current or proposed ACPD policing practices, rules, policies, procedures, directives and outcomes and in presenting findings of such investigations, reviews, and evaluations and any resulting recommendations to the County Board and the public;
- (e) create and a community complaint and case tracking system;
- (f) maintain the confidentiality of all records;
- (g) and perform other such duties as assigned by the Oversight Board.

§ 69-13 Interpretation

In any instance of disagreement between and among the Oversight Board, the Police Chief, the Independent Policing Auditor, or the County Manager regarding the interpretation of any provision of this Ordinance or the scope of authority delegated to the Oversight Board by the County Board, the County Board’s decision on the interpretation of this Ordinance and the scope of authority delegated to the Oversight Board shall be final. Disagreements over subpoenas or subpoena power implementation remains in the exclusive jurisdiction of the Arlington County Circuit Court.

Adopted: _____, 2021

5-18-21

ORDINANCE to amend the Code of Arlington County, Virginia, to add a new Chapter 69 establishing a Law Enforcement Civilian Review Board and Independent Policing Auditor

BE IT ORDAINED:

1. The Code of Arlington County, Virginia, is amended to add a new Chapter 69, effective July 1, 2021, as follows:

ARTICLE I. LAW ENFORCEMENT CIVILIAN REVIEW BOARD

§ 69-1. Law Enforcement Civilian Review Board

- (a) There is hereby established a public body to be known as the Law Enforcement Civilian Review Board (“Review Board”), the purposes, duties, and authorities of which shall be as set forth herein.
- (b) The Review Board is a public body appointed by the County Board to advise and to perform delegated functions of the County Board. It shall not be able to bring suit or to be sued in its own name.

§ 69-2. Review Board Purpose and Scope

- (a) Purpose: The purpose of the Review Board is to increase and maintain trust between and among the County Police Department, the County Board, the County Manager, and the public. The Review Board shall: provide timely, fair, and objective review and evaluation of County policing policies, practices, and procedures, and their implementation, and of completed investigations of incidents involving the County Police Department; provide meaningful assessments and corrective recommendations intended to maintain and promote non-discriminatory policing; ensure the protection of all communities through recommended actions and reform, including in the criminal justice system; and recommend strategies for effectively implementing identified reforms.
- (b) Scope: The Review Board shall have the authority to review investigations completed by the County Police Department for certain matters defined below, and evaluate policing practices, policies, procedures, and outcomes in Arlington, issue findings to the public, and provide actionable recommendations to the County Board, the County Manager, and the County Police Department, and other public agencies regarding policing practices, policies and procedures in Arlington. The Review Board is hereby authorized to perform the duties hereinafter prescribed.
- (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 applicable thereto, the Review Board shall enter into a memorandum of understanding (“MOU”) with the County Police Department. The MOU shall be signed by the Review Board Chair, the Independent Policing Auditor, the Police Chief, and the County Manager. The MOU shall define the terms of the

relationships and mutual obligations between the Review Board and the County Police Department. If a provision of the MOU conflicts with a provision of this enabling ordinance, the provision of the enabling ordinance shall govern.

- (d) Budget: In order to carry out their respective duties, the Review Board and Office of the Independent Policing Auditor shall be provided an annual budget subject to appropriation by County Board, and shall expend the appropriated funds consistent with:
 - i. the responsibilities of the Review Board and of the Office of the Independent Policing Auditor as provided for in this ordinance;
 - ii. the budget and appropriation approved by County Board; and
 - iii. County procurement and expenditure regulations and practices.
- (e) Review Board Reports: The Review Board shall produce public reports regarding the work of the Review Board and disseminate such reports in hardcopy and online, including, but not limited to:
 - i. a written report to the County Board by September 1 of each fiscal year of its activities for the prior fiscal year (ending June 30) under the provisions of this chapter along with any comments and recommendations it may choose to make; and
 - ii. a written report after each completed investigation review which shall not include any Personally Identifiable Information, or criminal or juvenile information prohibited from being disclosed by Virginia State or Federal Law. The reports of each review by the Review Board shall be provided to the public with all narratives, findings, and recommendations.
- (f) Other Duties: Undertake such other tasks as may be reasonably necessary for the Review Board to effectuate its authorized duties as defined in this ordinance.

§ 69-3. Review Board Member Requirements and Term of Office

- (a) The Review Board shall be composed of seven (7) voting members appointed by the County Board, which shall endeavor to create a fair, objective, independent, diverse, and representative body which shall reflect the demographic diversity of the County. The County Board will designate one of the members as Chair.
- (b) The voting members of the Review Board shall be residents of the County 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 Review Board.
- (c) The Review Board shall also have two (2) non-voting members appointed by the County Board who shall have past experience in law enforcement, but who 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 non-voting member shall be a current or former County employee, a current or former County elected official, a current candidate for public office, a current employee of a law enforcement agency, 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 initial Review Board, members shall be appointed for terms of four years each. Review Board members' terms shall be staggered. To that end, the County Board shall appoint four (4) voting members of the inaugural Review Board to 18-month terms and three (3) voting members to four-year terms. Initial non-voting members shall be appointed to four-year terms. A Review Board member may be appointed to no more than two consecutive four-year terms; however, members initially appointed to an 18-month term shall be eligible to serve two consecutive four-year terms after the conclusion of the initial 18-month term.
- (f) All Review Board members shall report directly to and may be removed by the County Board at any time in its discretion.

§ 69-4. Conflicts of Interest and Confidentiality

- (a) The Review 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. and shall file the annual disclosure form specified thereunder for local officials and each Review Board member shall upon appointment and each year thereafter sign an acknowledgment of their obligations to preserve confidentiality as provided in this ordinance, the MOU, and policies of the Review Board.
- (b) Except as included in the Review Board Reports as hereafter defined 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. Office of Professional Responsibility fair investigative files;
 - ii. disciplinary actions, memos and reports that the member receives during service on the Review Board;
 - iii. statements of a police officer, or County Police Department employee, who was required by the County Police Department to give a statement;
 - iv. criminal investigative files;
 - v. identities of confidential informants; and
 - vi. information concerning juveniles.
- (c) All original records provided to the Review Board by the County Police Department shall remain official County Police Department records.

Any breach of confidentiality by a Review Board member, as determined by the County Board, shall result in removal from the Review Board.

§ 69-5. Quorum, Voting, and Meetings

- (a) The Review Board shall comply with all requirements of the Virginia Freedom of Information Act pertaining to disclosure of public records and the conduct of public meetings including the requirement that all meetings shall be open to the public except under circumstances when the topic is authorized by the law to be discussed in a closed meeting.

- (b) The Review Board, assisted by the Independent Policing Auditor, 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 ordinance. Such bylaws shall be subject to public notice and public hearing before adoption by the Review Board.
- (c) The Review Board shall meet as often as necessary to conduct its business, but no less frequently than four times per calendar year.
- (d) The Review Board may take any action by motion or resolution upon an affirmative majority vote provided a quorum of at least five (5) out of seven (7) voting members must be present.
- (e) The Review Board shall keep minutes of its Review 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.

§ 69-6. Support of Review Board

- (a) Review Board Staff
 - i. An Independent Policing Auditor shall be hired by the County Manager as provided in § 69-11 who shall staff the Review Board and coordinate the Review Board's administrative functions.
 - ii. The Independent Policing Auditor shall hire such staff as shall be necessary to conduct the assigned duties of the Review Board, subject to appropriation of funds therefore by the County Board. Such staff functions may be performed by consultants or full-time employees.
 - iii. The County Attorney shall serve as legal advisor to the Review Board. As to a particular matter, and in the event the Review Board or the County Attorney determine that there is a conflict of interest that precludes effective representation by the County Attorney's Office, the Review Board shall retain outside counsel to advise the Review Board from a list of attorneys recommended by the County Attorney.
- (b) Other Support from the County
 - i. A website shall be established for the Review Board hosted on the County's website. The Review Board shall determine what is posted on the Review Board's website to the extent it complies with all applicable Federal, State and local laws.
 - ii. All public meetings of the Review Board shall be videotaped and made available to the public on the County's website.
 - iii. The County shall not interfere unreasonably with the Review Board's decisions,

assisted by the Independent Policing Auditor, to post materials to or remove materials from the Review Board's website.

- iv. The Review Board members shall be provided with a County email address to be used exclusively for Review Board-related matters.
- v. The County Manager, including all County departments and staff, shall make a good faith effort to cooperate with and assist the Review Board, and shall comply with all reasonable Review Board requests or expeditiously provide a reason for rejection.

§ 69-7. Review Board Training

At least once every year, and prior to voting on any matter before the Board (but in no case later than six months after appointment to the Review Board), Review 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 County staff including but not limited to the following:
 - i. legal and ethical obligations of members of a public body appointed by the County Board;
 - ii. County Police Department policies and training, including but not limited to defensive tactical training, crisis intervention training, and de-escalation training;
 - iii. relevant privacy rules and County policies and procedures involving liability, employee discipline, and other matters related to police operations; and
 - iv. County Police Department and County administrative systems, processes, structures and operations.
- (c) at least three ride-along sessions with County Police Department patrol operations per calendar year.
- (d) The County and the Independent Policing Auditor shall provide Review Board members with additional training, which shall include but not be 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.
- (e) The matters listed above for required training may change through amendments to the Memorandum of Understanding provided for in § 69-2(c) or by amendment of this ordinance.

§ 69-8. Access to County Police Department Records

- (a) The Review Board and the Independent Policing Auditor shall be provided full access to all County Police Department reports, files, and records related to the Review Board's review of complaints filed with the Review Board or with County Police Department subject to such limitations as may be imposed thereon by this Chapter and applicable laws.

All records, documents and materials in the possession of County Police Department or the County that are determined by the Review Board to be necessary and requested by the Review Board to carry out its authorized functions shall be provided in a form agreed to in the MOU referenced in § 69-2(c) and in a manner consistent with applicable laws. At the time the County Police Department provides the aforesaid reports, files, and records, it shall identify generally those records that have been withheld in accordance with the provisions of this ordinance and the MOU.

- (b) Records containing confidential information such as information protected by law, personally identifiable information, information that may reveal the identity of a confidential source, information that could endanger the life or physical safety of any individual, information that would disclose techniques, procedures, or guidelines used in criminal investigations or prosecutions that if revealed may reasonably be expected to risk the circumvention of the law, or information eligible for exemption from the mandatory disclosure requirements under the Virginia Freedom of Information Act, may be reviewed only in a properly convened closed session of the Review Board in order to maintain the confidentiality of the information.
- (c) The County Police Department shall not provide records to the Review Board if the records requested are related to the following matters if such disclosure would compromise said matters through the revelation of the process, evidence, methods, scope or other factors in said matters, until such time as the matter is completed or a determination is made by the County Manager that the matter will not be compromised by the release of the requested documents:
 - i. investigative files for an active criminal investigation;
 - ii. files related to an active internal investigation by the County Police Department;
 - iii. files related to an active investigation by the Commonwealth Attorney, the Virginia Attorney General, or the United States Department of Justice;
 - iv. files related to a County Police Department officer or employee who is the subject of an active disciplinary proceeding or grievance;
 - v. files related to active civil litigation involving a County Police Department officer or employee, including the applicable appeal period for such litigation;
 - vi. files related to an active EEOC claim involving a County Police Department officer or employee;
 - vii. files related to an active Office of Human Rights investigation involving a County Police Department officer or employee; and
 - viii. files related to pending claims where litigation is reasonably expected as determined by the County Attorney.

§ 69-9. Review Board Duties

- (a) Review Board Readiness Resolution
 - i. Within thirty (30) days after the initial Review Board members are appointed by the County Board, the Review Board shall meet to establish its practices and procedures. When the Review Board has established its procedures, the Memorandum of

Understanding required pursuant to § 69-2(c) has been executed by all parties, the Review Board is sufficiently staffed and all training has been completed it shall pass a resolution indicating its readiness to take on the responsibilities assigned to it in this Chapter.

(b) Complaint Intake

- i. The Review Board will develop and administer a process for receiving community complaints regarding conduct of the County Police Department law enforcement officers of the County Police Department and referring complaints to the County Police Department for investigation. This process shall be separate and distinct from any existing procedures by which the County Police Department receives community complaints as specified under Virginia Code § 9.1-600.
- ii. Complaints filed with the Review Board may be submitted using a form provided by the Review 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 Review Board.
- iii. Information about the process for filing a complaint with the Review Board, complaint forms, and general information about the Review Board and its purpose and scope shall be made available online and at the office of the Independent Policing Auditor, the County Police Department, the County's 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 Review Board, complaint forms, and general information about the Review Board and its purpose and scope shall be made readily available in English, Spanish, and in any additional language as requested by an individual submitting a complaint to the Review Board.

(c) Review of Completed County Police Department Investigations

- i. The County Police Department shall continue to investigate all complaints submitted to the County Police Department or to the Review Board. The County Police Department shall complete its investigation of the complaint and provide an investigation report to the Review Board within sixty (60) days subject to the provisions of § 69-8 concerning ongoing investigations or litigation. The Review Board shall extend the 60-day period upon request of the Police Chief to protect an ongoing investigation, or for other good cause, with notice to the complainant and County Board.
- ii. The Review Board may review all completed investigations conducted by the County Police Department regarding conduct of County Police Department law enforcement officers, whether received by the County Police Department or the Review Board, to ensure their thoroughness, completeness, accuracy, objectivity, impartiality and the sufficiency of any discipline resulting from such investigations. The Review

- 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 Review Board and set forth in the MOU or other policies of the Review Board.
- iii. The Review Board shall not conduct a review of or otherwise inquire into any matter which is subject to investigation and for which an investigation has not been completed. For purposes of this ordinance, completed investigations are those matters not identified in § 69-8(c).
 - iv. 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 review duties as provided by this ordinance and subject to § 69-8(c), the Review Board is unable to obtain such attendance or production, the Review Board by two-thirds vote of a quorum of the Review Board may direct the Independent Policing Auditor, on behalf of the Review Board, to apply to the Arlington 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. In seeking a subpoena, the Review Board shall not unreasonably withhold its agreement to limitations requested by the County Manager on the scope of the subpoena intended to protect confidential information and other information that may adversely affect pending matters related to the matters under review by the Review Board.
 - v. After completing an investigation review including any public hearing the Review Board may conduct, the Review Board may reach one of the following findings:
 - 1) concur with all or some of the findings and determinations detailed in the investigation review report;
 - 2) advise the County Board, the County Manager, and the Police Chief that the findings are not supported by the information reasonably available to the County Police Department and recommend further review and consideration by the Police Chief; or
 - 3) advise the County Board, the County Manager, and the Police Chief that, in the Review Board's judgment, the investigation is incomplete and recommend additional investigation.
 - vi. The Review Board shall complete its investigation review and provide its investigation review report and other findings within sixty (60) days of commencing its review and subject to the provisions of § 69-8 concerning ongoing investigations or litigation. The Review Board may extend the 60-day period for good cause with notice to the County Manager and the Police Chief.
- (d) **OPTION (NOT RECOMMENDED BY THE COUNTY MANAGER):** Investigation of Pending Complaints and Incidents

- i. Notwithstanding the provisions of § 69-9(c) and 69-10, investigations of the following pending incidents involving an officer of the County Police Department, whether they come in as a complaint or not, may be conducted by the Review Board with the Independent Policing Auditor’s assistance:
 - 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.

“Severe misconduct” defined as dereliction of duty or unlawful or improper behavior as further defined in the MOU.

- 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 investigative duties, the Review Board is unable to obtain such attendance or production, the Review Board by two-thirds vote of a quorum of the Review Board may direct the Independent Policing Auditor, on behalf of the Review Board, to apply to the Arlington 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. In seeking a subpoena, the Review Board shall not unreasonably withhold its agreement to limitations requested by the County Manager on the scope of the subpoena intended to protect confidential information and other information that may adversely affect pending matters related to the matters under review by the Review Board. The provisions of § 69-8(c) shall not be applicable to investigations conducted by the Review Board.
- iii. At the conclusion of the investigation, the Independent Policing Auditor shall forward the file with a report of investigation to the Review Board. The Review Board may hold a public hearing on the investigation. At the conclusion of the investigation and any public hearing, the Review Board may take 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 incident was justified;
 - 2) Refer the complaint to the Commonwealth’s Attorney for Arlington County; and
 - 3) Recommend disciplinary action to be taken by the Police Chief.
 - a. Prior to making a recommendation of disciplinary action in public, the Review

Board shall provide its recommendation to the Police Chief for consideration and possible implementation in the Police Chief's discretion.

- iv. If the County Police Department declines to implement the discipline recommended by the Review Board, the Chief of Police shall, within thirty (30) days of the Review Board's recommendation, create a written record, which shall be made available to County Board, the County Manager, and the public, of its rationale for declining to implement the recommendation of the Review Board.

(e) Review Board Policy Recommendations and Duties

- i. The Review Board shall have the following duties regarding review of police policy and procedure:

- 1) review and evaluate existing and proposed County Police Department administrative directives, including all rules, policies, and procedures which direct the operation of the County Police Department and its employees including the implementation of such directives, rules, policies and procedures;
- 2) review and evaluate reports issued and data collected by the County Police Department related to policing practices, policies, procedures, and outcomes;
- 3) receive, review and evaluate the annual budget and expenditures of the County Police Department and make budgetary recommendations;
- 4) advise the County Manager on the hiring and annual evaluation of the Independent Policing Auditor;
- 5) recommend legislation, policy changes and other actions related to duties of the Review Board to the County Board, the County Manager, the County Police Department, and other public agencies;
- 6) conduct community outreach related to the review and reform of policing practices, policies and procedures in the County and the work of the Review Board; and
- 7) review and evaluate periodic reports from the Police Chief regarding implementation of recommendations made by the Review Board.

- ii. The Review Board may recommend policies or procedures to the County Board, the County Manager and the Police Chief concerning police practices, policies and procedures. The Review Board shall present in writing its findings, and recommendations with supporting rationale to the County Board, the County Manager, and the Police Chief within thirty (30) days from the date the Review Board adopted its recommendations.

- a. The Review Board's recommendations shall be included in any public reports

issued by the Review Board, including hardcopy and online.

- b. If the County Police Department declines to implement any changes recommended by the Review Board, the Chief of Police shall, within thirty (30) days of the Review Board's recommendation, create a written record, which shall be made available to the County Board, the County Manager, and the public, of its rationale for declining to implement the recommendation of the Review Board.

§ 69-10. Exclusions

- (a) The Review Board shall not consider complaints, incidents, 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 Review Board or the County Police Department;
 - ii. Any financial management related issue; or
 - iii. Any other claim outside the scope of the Review Board's authority as provided for by this Chapter or applicable law.
 - iv. Any matter identified in §69-8(c)

§ 69-11. Independent Policing Auditor

The County Manager shall hire an Independent Policing Auditor, in consultation with the County Board and the Review Board, with the terms and conditions of such appointment set forth in a position description. The Independent Policing Auditor shall be provided office space by the County, but such office space shall not be housed in any County Police Department facility. The County Manager shall consult with, and receive the recommendations of, the Review Board as part of the County Manager's review of the Independent Policing Auditor's performance.

§ 69-12 Independent Policing Auditor Duties and Responsibilities

The Independent Policing Auditor shall:

- (a) provide the necessary administrative and policy support for the Review Board, as well as assist the Review Board with achieving its purpose and in carrying out its scope;
- (b) hire and supervise and make employment decisions regarding the Independent Policing Auditor's staff in accordance with existing County Administrative Regulations and Human Resources procedures, subject to the budget and appropriation of funds;
- (c) be responsible for the independent review of County 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 Review Board;
- (d) perform a quality assurance function with the goal of identifying systematic changes that will improve police services to the community;
- (e) receive complaints from the public
- (f) create and manage a community complaint and case tracking system;

- (g) provide support to the Review Board in its review of completed investigations by the County Police Department;
- (h) review of any disciplinary actions taken that may arise as a result of investigations conducted by the County Police Department; and
- (i) maintain the confidentiality of all records not authorized for public disclosure.

§ 69-13 Interpretation

In any instance of disagreement between and among the Review Board, the Police Chief, the Independent Policing Auditor, or the County Manager regarding the interpretation of any provision of this Ordinance or the scope of authority delegated to the Review Board by the County Board, the County Board shall resolve such disagreement in consultation with the County Attorney. The County Board’s decision on the interpretation of this Ordinance and the scope of authority delegated to the Review Board shall be final.

BE IT FURTHER ORDAINED:

2. The County Manager, in consultation with the Review Board, the Independent Policing Auditor, community stakeholders, the Police Chief and County Police Department officers and employees, shall conduct and submit to the County Board by June 30, 2023, a review of this ordinance and its effectiveness, including recommendations for improvements.

Adopted: _____, 2021

5-18-21

6-10-21 version (Arlington Branch NAACP & Arlington for Justice)

ORDINANCE to amend the Code of Arlington County, Virginia, to add a new Chapter 69 establishing a Law Enforcement Civilian Review Oversight Board and Independent Policing Auditor

BE IT ORDAINED:

- 1. The Code of Arlington County, Virginia, is amended to add a new Chapter 69, effective July 1, 2021, as follows:

ARTICLE I. LAW ENFORCEMENT CIVILIAN REVIEW OVERSIGHT BOARD

§ 69-1. Law Enforcement Civilian Oversight Review Board

- (a) There is hereby established a public body to be known as the Law Enforcement Civilian Review Oversight Board (“Review Oversight Board”), the purposes, duties, and authorities of which shall be as set forth herein.
- (b) The Review Oversight Board is a public body appointed by the County Board to oversee the Arlington County Police Department (“ACPD”), to advise and to perform delegated functions of the County Board, and as otherwise set forth in this Ordinance. It shall not be able to bring suit or to be sued in its own name.

§ 69-2. Review Oversight Board Purpose and Scope

- (a) Purpose: The purpose of the Review Oversight Board is to effectively oversee law enforcement in the County, and to increase and maintain trust between and among the County Police Department, the County Board, the County Manager, ACPD, and the public. The Review Oversight Board shall:
 - i. for certain matters defined below, investigate complaints and incidents, make findings concerning incidents it investigates, and make binding disciplinary determinations of County Police Department officers and civilian employees, after consultation with the Chief of the ACPD² (“incident investigations”);
 - ii. Receive, investigate or refer civilian complaints made to the Oversight Board;

¹ The name of the board is drawn from Va. Code Ann. §9.1-507 (hereinafter “Virginia Oversight Act”). This name more accurately reflects even the limited Board duties proposed by the advertised ordinance, which, in addition to reviewing completed investigations, included “evaluat[ing] policing practices, policies, procedures, and their implementation.”

² Virginia Oversight Act §9.1-601(C)(3). All revisions herein to the advertised ordinance are consistent with the Virginia Oversight Act and the recommendations of the Police Practices Group Report (“PPG Report”). All language shown in bold is quoted directly from the Virginia Oversight Act and/or the PPG Report, except that “ACPD,” “the County,” or the “Police Chief” have been substituted for “locality” or “law enforcement agency” for clarity. The revision otherwise endeavors to preserve as much of the language of the advertised ordinance as is consistent with the same authorities.

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iii. for certain matters defined below, the Oversight Board may, in its discretion, review investigations completed and disciplinary determinations proposed by the ACPD, including internal investigations of civilians and others employed in or assigned to the ACPD, issue findings regarding the accuracy, completeness, and impartiality of such investigations and issue findings on the sufficiency of any discipline resulting from such investigations. (“ACPD investigation review”);

iv. make binding disciplinary determinations after consultation with the Chief of the ACPD³

v. provide timely, fair, and objective investigation, review, and evaluation of County policing policies, practices, and procedures, and their implementation, and of completed investigations of incidents involving the County Police Department; provide meaningful assessments and corrective of the ACPD, and make recommendations intended regarding changes to such policies, practices, and procedures⁴ it determines is necessary to maintain and promote non-discriminatory policing; (“pattern and practice investigation and evaluation”);

vi. use subpoena power; and

vii. ensure the protection of all communities through findings, recommended actions and reform, including in the criminal justice system; and recommend strategies for effectively implementing identified reforms.

~~(b) Scope: The Review Oversight Board shall have the authority to review investigations completed by receive citizen complaints and to investigate complaints and incidents involving the County Police Department ACPD for certain matters defined below, and; review completed ACPD investigations; and make binding disciplinary determinations after consultation with the Chief of Police; evaluate policing practices, policies, procedures, and outcomes in Arlington, issue; and disclose findings to the public, and provide actionable recommendations to, and disciplinary determinations to the public, the County Board, the County Manager, and the County Police Department ACPD, and other public agencies regarding its duties, investigations, policing practices, policies and procedures in Arlington County. The Review Oversight Board is hereby authorized to perform the duties hereinafter prescribed.~~

~~(c) Procedural Memorandum of Understanding: In order, and the ACPD and County Manager shall fully and timely cooperate with the Oversight Board. The Oversight Board shall adopt and make public such rules and procedures as it deems appropriate, to carry out its scope and authorized functions, and to define in more detail the process and terms applicable thereto, the Review Board shall enter into a memorandum under this ordinance. The office of understanding (“MOU”) with the County Police Department. The MOU shall be signed by the Review Board Chair, the Independent Policing Auditor, the Police Chief, and the County Manager. The MOU shall define the terms of the~~

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³ Id. §9.1-601(C)(3) & (5).

⁴ Id. §9.1-601(C)(4).

~~(b)~~ relationships and mutual obligations between the Review is hereby established, which is hired by and reports to the Oversight Board and the County Police Department. If a provision of the MOU conflicts with a provision of this enabling ordinance, the provision of the enabling ordinance shall govern.

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~~(c)~~ Budget: In order to carry out their respective duties, the Review Oversight Board and the Office of the Independent Policing Auditor shall be provided an annual budget subject to appropriation by County Board, and shall expend the appropriated funds consistent with:

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i. the responsibilities of the Review Oversight Board and of the Office of the Independent Policing Auditor as provided for in this ordinance;

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ii. the budget and appropriation approved by County Board; and

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iii. County procurement and expenditure regulations and practices.

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~~(d)~~ Review Oversight Board Reports: The Review Oversight Board shall produce public reports regarding the work of the Review Oversight Board and disseminate such reports in hardcopy and online, including, but not limited to:

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i. a written report to the County Board by September 1 of each fiscal year of its activities for the prior fiscal year (ending June 30) under the provisions of this chapter along with any comments and recommendations it may choose to make; and, including its recommendations and evaluations, its assessment of cooperation between the Oversight Board and the ACPD and ways to improve such cooperation, and any after action assessments deemed necessary to facilitate the implementation of best practices, social justice principles and effective, compassionate policing of marginalized communities.

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ii. a written report after each completed investigation or review, which shall not include any Personally Identifiable Information, or criminal or juvenile information prohibited from being disclosed by Virginia State or Federal Law. The reports of each investigation or review by the Review Oversight Board shall be provided in full to the public with all narratives, findings, and recommendations public.

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~~(e)~~ Other Duties: Undertake such other tasks as the Oversight Board determines may be reasonably necessary for the Review Board it to effectuate its authorized duties as defined in this ordinance.

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§ 69-3. Review Oversight Board Member Requirements and Term of Office

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(a) The Review Oversight Board shall be composed of seven (7) voting members appointed by the County Board, which shall endeavor to create a fair, objective, and independent, diverse, and representative body which shall reflect that represents the economic, geographic, and demographic diversity of the County. The County Board will designate one of the

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members as Chair.⁵ They shall include:⁶

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i. ~~The voting members of the Review Board shall be residents of the County 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 Review Board. at least three (3) members who come from historically, racially, or socially marginalized communities that have commonly experienced disparate policing in the Commonwealth of Virginia: and~~

ii. ~~at least two (2) members who represents an organization, office, or agency that seeks racial or social justice, the protection of civil rights, or otherwise advocates on behalf of historically, racially, or socially marginalized communities, particularly communities that may have experienced disparate policing.~~

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iii. ~~The Review Board shall also have two (2) non-voting members appointed may be selected by the County Oversight Board, who shall have past experience in law enforcement, but who shall not be a current employee of, or an immediate family member of, a current employee of any law enforcement agency, and or Arlington County government and shall not have served in law enforcement at any time with Arlington County. ACPD officer(s) may be tasked to provide expertise and training to the Oversight Board, at the request of the Oversight Board and in the discretion of the ACPD Chief.~~

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~~(b) The seven (7) voting members of the Oversight Board shall be residents of the County and shall demonstrate fairness, integrity and objectivity. They shall be at least three years honorably removed from service chosen by the County Board following a public advertisement for applications, including a widely distributed press release announcing the request for applications.~~

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~~(c) No voting or non-voting member shall be a current or former County employee, a current or former County elected official, a current candidate for public office, a current employee of any law enforcement agency, 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.~~

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⁵ *Id.* §9.1-601(B).

⁶ The following two sub-provisions were adapted from Alexandria Ordinance No. 5337, §2-4-222(b) to implement the Virginia Oversight Act's requirement for diversity. Va. Code Ann. §9.1-601(B).

~~from service.~~

~~(d) Except as to the initial Review Oversight Board, members shall be appointed for terms of four years each. Review Oversight Board members' terms shall be staggered. To that end, the County Board shall appoint four (4) voting members of the inaugural Review Oversight Board to 18-month terms and three (3) voting members to four-year terms. Initial non-voting members shall be appointed to four-year terms. A Review Oversight Board member may be appointed to no more than two consecutive four-year terms; however, members initially appointed to an 18-month term shall be eligible to serve two consecutive four-year terms after the conclusion of the initial 18-month term.~~

~~(f) All Review Board members shall report directly to and may be removed by the County Board at any time in its discretion.~~

§ 69-4. Conflicts of Interest and Confidentiality

(a) The Review Oversight 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. and shall file the annual disclosure form specified thereunder for local officials and each Review Oversight Board member shall upon appointment and each year thereafter sign an acknowledgment of their obligations to preserve confidentiality as provided in this ordinance, the MOU, and policies of the Review Oversight Board.

(b) Except as included in the Review Oversight Board Reports as hereafter defined and to the extent allowed permissible 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. Office of Professional Responsibility fair investigative files;
- ii. disciplinary actions, memos, and reports that the member receives during service on the Review Oversight Board;
- iii. statements of a police officer, or County Police Department ACPD employee, who was required by the County Police Department ACPD to give a statement;
- iv. criminal investigative files;
- v. identities of confidential informants or victims; and
- vi. information concerning juveniles.

(c) All original records provided to the Review Oversight Board by the County Police Department ACPD shall remain the official County Police Department ACPD records.

~~Any breach of confidentiality by a Review Board member, as determined by the County Board, shall result in removal from the Review Board.~~

§ 69-5. Quorum, Voting, and Meetings

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(a) The Review Oversight Board shall comply with all requirements of the Virginia Freedom of Information Act pertaining to disclosure of public records and the conduct of public meetings including the requirement that all meetings shall be open to the public except under circumstances when the topic is authorized by the law to be discussed in a closed meeting.

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~~The Review Board, assisted by the Independent Policing Auditor,~~

(b) ~~The Oversight Board~~ 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 ordinance. ~~Such bylaws shall be subject to public notice and public hearing before adoption by the Review Oversight Board.~~

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(c) The ~~ReviewOversight~~ Board shall meet as often as necessary to conduct its business, but no less frequently than four (4) times per calendar year, ~~or as otherwise determined by the Oversight Board Chair.~~

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(d) The ~~ReviewOversight~~ Board may take any action by motion or resolution upon an affirmative majority vote ~~of those members present and voting, provided a quorum of at least five (5) out of seven (7) voting members, must be are present.~~

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(e) The ~~Oversight Board~~ may meet and vote virtually. ~~Non-voting members may not attend closed sessions of the Oversight Board.~~

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~~(e)(f) The ReviewOversight Board shall keep minutes of its ReviewOversight Board meetings, and those minutes shall include;~~

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i. ~~the date, time, and location of each meeting;~~

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ii. ~~the members present and absent;~~

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iii. ~~a summary of the discussion on matters proposed, deliberated, or decided; and~~

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iv. ~~a record of any votes taken.~~

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§ 69-6. Support of ~~ReviewOversight~~ Board

(a) ~~ReviewOversight~~ Board Staff

i. ~~After consultation with the County Manager concerning recruiting of candidates for Independent Policing Auditor shall be hired, and with advertising and recruitment assistance by the County Manager, the Oversight Board shall interview and identify at least two (2) candidates to the County Board, which shall select one candidate as provided in § 69-11 who the Independent Policing Auditor.~~

ii. ~~The Independent Policing Auditor shall staff the ReviewOversight Board and coordinate the ReviewOversight Board's administrative functions, and report to the Oversight Board and, as necessary, to the County Board.~~

iii. ~~The Independent Policing Auditor shall hire such staff as shall be necessary to conduct the assigned duties of the ReviewOversight Board, subject to appropriation of funds therefore by the County Board. Such staff functions may be performed by consultants, part-time or full-time employees.~~

iii. ~~The County Attorney shall serve as legal advisor to the Review Board. As to a particular matter, and in the event the Review Board or the County Attorney determine that there is a~~

~~conflict of interest that precludes effective representation by the County Attorney's Office, the Review Board shall retain outside counsel to advise the Review Board from a list of attorneys recommended by the County Attorney.~~

~~Other~~

~~iv. The Oversight Board may seek the advice of the County Attorney and it may retain its own independent legal counsel to advise and/or represent it, in all cases, hearings, controversies, or matters involving the interests of the Oversight Board. Such counsel shall be paid from funds appropriated by the County.⁷~~

(b) Support from the County

- ~~i. A website shall be established for the Review Oversight Board hosted on the County's website. The Review Oversight Board shall determine what is posted on the Review Oversight Board's website to the extent it complies with all applicable Federal, State, and local laws.~~
- ~~ii. All public meetings of the Review Oversight Board shall be videotaped and made available to the public on the County's website.~~
- ~~iii. The County shall not interfere unreasonably with the Review Board's decisions.~~

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⁷ *Id.* §9.1-601(G).

~~assisted by the Independent Policing Auditor, to post materials to or remove materials from the Review Board's website.~~

~~iviii. The Review Board members shall be provided with a County email address to be used exclusively for Review Oversight Board-related matters.~~

~~v. The County Manager, including all County departments and staff, shall make a good faith effort to cooperate with and assist the Review Board, and shall comply with all reasonable Review Board requests or expeditiously provide a reason for rejection.~~

~~iv. County will perform such activities to ensure compliance with the Virginia Public Records Act.~~

§ 69-7. Review Oversight Board Training

~~At least once every year, and prior to voting on any matter before the Board (but in no case later than six months after appointment to the Review Board), Review 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 County staff including but not limited to the following:~~

- ~~i. legal and ethical obligations of members of a public body appointed by the County Board;~~
- ~~ii. County Police Department policies and training, including but not limited to defensive tactical training, crisis intervention training, and de-escalation training;~~
- ~~iii. relevant privacy rules and County policies and procedures involving liability, employee discipline, and other matters related to police operations; and~~
- ~~iv. County Police Department and County administrative systems, processes, structures and operations.~~

~~(c) at least three ride along sessions with County Police Department patrol operations per calendar year.~~

~~(a) Such training as required by all other county commissions and boards, such as the Conflicts of Interest Act and Virginia Freedom of Information Act shall be provided to the Commission. Additional training opportunities may be developed in coordination with the ACPD, and non-profit organizations involved in policing research and reform. The ACPD may make voluntary training opportunities available throughout each year, such training to be mandatory only at the discretion of a majority vote of the Oversight Board.~~

~~(d) The County and the Independent Policing Auditor shall provide Review Board members with additional training, which shall include but not be 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.~~

~~(e) The matters listed above for required training may change through amendments to the Memorandum of Understanding provided for in § 69-2(e) or by amendment of this ordinance.~~

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§ 69-8. Access to County Police Department Records

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- (a) ~~The Review~~ Subject to such limitations as may be imposed thereon by this Chapter, the Oversight Board and the Independent Policing Auditor shall be provided full and timely access to all County ~~Police Department and ACPD information,~~ reports, files, ~~and records,~~ witnesses, and other information related to the ~~Review~~ Oversight Board's duties enumerated herein, including but not limited to, ACPD proposed discipline, an incident investigation(s), ACPD investigation review of complaints filed with the Review(s), or pattern and practice investigation(s) and evaluation(s) by the Oversight Board or with County Police Department subject to such limitations as may be imposed thereon by this Chapter and applicable laws, including but not limited to:
 - i. Personnel records, contact cards, memos and all other information that otherwise would be part of supervisory, Office of Professional Accountability or command staff files;
 - ii. Audio and video data, including but not limited to photographs, surveillance footage, footage from body cameras, dashboard cameras, and CCTV and other such technologies hereafter adopted by ACPD or the County.
 - iii. As used in this ordinance, "information" or "records" includes the above and includes, but is not limited, to data, written records, electronic records, Human Resources records, notes, diagrams, photographs, physical and electronic evidence, after action reports, initial notification reports, scanner and 9-11 communications, press reports if collected by the County, transcripts of the same and other such information that is reasonably calculated to lead to the information needed to perform the duties and oversight functions enumerated herein.

(b) All records and information requested by the Oversight Board shall be provided within five (5) business days. If that is not reasonably possible, the ACPD shall explain in writing the reason(s) it cannot comply on or before the fifth day and shall be granted an additional seven (7) days to comply. All records and information shall be produced in a manner and format easily accessible by the Oversight Board and without cost.

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(c) ~~The~~ Oversight Board may make audio-video data public after consulting with ACPD, and at its discretion, with the County Attorney or an attorney retained by the Oversight Board, concerning the desirability of first redacting any part of such data.

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All records, documents and materials in the possession of County Police Department or the County that are determined by the Review Board to be necessary and requested by the Review Board to carry out its authorized functions shall be provided in a form agreed to in the MOU referenced in § 69-2(e) and in a manner consistent with applicable laws. At the time the County Police Department provides the aforesaid reports, files, and records, it shall identify generally those records that have been withheld in accordance with the provisions of this ordinance and the MOU.

(d) ACPD shall timely comply with requests made by the Oversight Board for, and shall timely forward on a quarterly basis, data such as police stops by location and race, citations, arrests made by location and race, search warrants executed by neighborhood and race of the homeowner or tenant or suspect, the number and type of discipline issued to law enforcement or civilian employees to include race and infraction and method of discipline (including verbal and informal counseling or contact cards).

(e) Records containing confidential information such as information protected by law, personally identifiable information not contained in a supervisory or command staff file, information that may reveal the identity of a confidential source, information that could endanger the life or physical safety of any individual, information that would disclose techniques, procedures, or guidelines used in criminal investigations or prosecutions that if revealed may reasonably be expected to risk the circumvention of the law, or information eligible for exemption from the mandatory disclosure requirements under the Virginia Freedom of Information Act, may be reviewed only in a properly convened closed session of the Review Board in order to maintain the confidentiality of the information shall be held confidential and secured in a format and manner so as to prevent inadvertent disclosure. The County Manager shall, through the Department of Technology Services, provide such assistance as necessary to establish an information system to electronically secure such records.

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(f) The County Police Department shall ACPD may, in its discretion, elect not to immediately provide records to the Review Oversight Board if the records requested are information that is related to the following matters if such a pending criminal investigation or judicial proceeding, if disclosure of that information would compromise said matters investigation or proceeding through the revelation of the process, evidence, methods, scope, or other factors, except that the ACPD shall provide such information:

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i. after such criminal investigation is completed, or sixty (60) days after the commencement of such investigation, whichever is sooner, unless Police Department makes showing of good cause in said matters, until writing to the Oversight Board for an extension of such time;

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ii. after such criminal judicial proceeding is withdrawn or completed.

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(g) If, after making a good faith effort to obtain, voluntarily, the attendance of witnesses and as the matter is completed or a determination is made production of books, papers, and other information necessary to perform its as provided by this ordinance, and after consultation with the County Manager that the matter will not be compromised by Oversight Board is unable to obtain such attendance or production, the release Oversight Board may,

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by majority vote of a quorum of the requested documents: Oversight Board, direct its counsel to apply to the Circuit Court for Arlington County for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence. Any person so subpoenaed may apply to the court that issued such subpoena to quash it.⁸

- i. investigative files for an active criminal investigation;
- ii. files related to an active internal investigation by the County Police Department;
- iii. files related to an active investigation by the Commonwealth Attorney, the Virginia Attorney General, or the United States Department of Justice;
- iv. files related to a County Police Department officer or employee who is the subject of an active disciplinary proceeding or grievance;
- v. files related to active civil litigation involving a County Police Department officer or employee, including the applicable appeal period for such litigation;
- vi. files related to an active EEOC claim involving a County Police Department officer or employee;
- vii. files related to an active Office of Human Rights investigation involving a County Police Department officer or employee; and
- viii. files related to pending claims where litigation is reasonably expected as determined by the County Attorney.

§ 69-9. Review Oversight Board Duties

(a) Review Oversight Board Readiness Resolution

- i. Within thirty (30) days after the initial Review Oversight Board members are appointed by the County Board, the Review Oversight Board shall meet to establish its practices and procedures. When the Review Board has established its procedures, the Memorandum of and consult with the County Manager regarding the recruitment of candidates for Independent Policing Auditor.

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⁸ *Id.* §9.1-601(D); PPG Report at 22.

Understanding required pursuant to § 69-2(c) has been executed by all parties, the Review Board is sufficiently staffed and all training has been completed it shall pass a resolution indicating its readiness to take on the responsibilities assigned to it in this Chapter.

- ii. Within sixty (60) days of passing such a resolution, the Oversight Board shall identify and report to the County Board three candidates for Independent Policing Auditor.
- iii. Within thirty days of the Oversight Board's report to the County Manager identifying candidates for Independent Policing Auditor, the Manager shall hire one of the identified candidates, unless for good cause shown, he requests an extension of time to do so.

(b) Complaint Intake

- i. The ~~Review Oversight~~ Board ~~in conjunction with the Independent Police Auditor~~ will develop and administer a process for receiving ~~and investigating community or citizen complaints ("citizen complaints")~~ regarding conduct of the ~~County Police Department~~ ~~ACPD~~ law enforcement officers of the ~~County Police Department and or~~ ~~civilian employees~~ and a process for referring such complaints, if it deems appropriate, to the ~~County Police Department~~ ~~ACPD~~ for the initial investigation.⁹
- ii. ~~The~~ ~~This process~~ ~~Oversight Board~~ shall be separate and distinct from any existing ~~establish rules and procedures by which the County Police Department~~ governing the intake, investigation, and resolution of citizen complaints ~~it receives community complaints as specified under Virginia Code § 9.1-600. Those rules and procedures shall ensure a fair, objective and timely investigation and resolution.~~
- iii. Complaints filed with the ~~Review Oversight~~ Board may be submitted using a form provided by the ~~Review Oversight~~ 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 ~~Review Oversight~~ Board.
- iii. Information about the process for filing a complaint with the ~~Review Oversight~~ Board, complaint forms, and general information about the ~~Review Oversight~~ Board and its purpose and scope shall be made available online and at the office of the Independent Policing Auditor, the ~~County Police Department~~ ~~ACPD~~, the County's 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 ~~Review Board~~ ~~Such information~~, complaint forms, and general information about the ~~Review Oversight~~ Board and its purpose and scope shall be made readily available in English, Spanish, and in any ~~additional language as requested by an individual submitting a~~

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⁹ PPG Report at 23.

complaint to the ~~Review Board~~ Oversight Board. The County Manager shall be responsible for ensuring compliance with this section.

(e) ~~Review of Completed County Police Department Investigations~~

i. ~~The County Police Department shall continue to investigate all complaints submitted to the County Police Department or to the Review Board. The County Police Department shall complete its investigation of the complaint and provide an investigation report to the Review Board within sixty (60) days subject to the provisions of § 69-8 concerning ongoing investigations or litigation. The Review Board shall extend the 60-day period upon request of the Police Chief to protect an ongoing investigation, or for other good cause, with notice to the complainant and County Board.~~

ii. ~~The Review Board may review all completed investigations conducted by the County Police Department regarding conduct of County Police Department law enforcement officers, whether received by the County Police Department or the Review Board, to ensure their thoroughness, completeness, accuracy, objectivity, impartiality and the sufficiency of any discipline resulting from such investigations. The Review~~

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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 Review Board and set forth in the MOU or other policies of the Review Board.

iii. The Review Board shall not conduct a review of or otherwise inquire into any matter which is subject to investigation and for which an investigation has not been completed. For purposes of this ordinance, completed investigations are those matters not identified in § 69-8(e).

iv. 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 review duties as provided by this ordinance and subject to § 69-8(e), the Review Board is unable to obtain such attendance or production, the Review Board by two-thirds vote of a quorum of the Review Board may direct the Independent Policing Auditor, on behalf of the Review Board, to apply to the Arlington 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. In seeking a subpoena, the Review Board shall not unreasonably withhold its agreement to limitations requested by the County Manager on the scope of the subpoena intended to protect confidential information and other information that may adversely affect pending matters related to the matters under review by the Review Board.

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v. After completing an investigation review including any public hearing the Review Board may conduct, the Review Board may reach one of the following findings:

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1) ~~concur with all or some of the findings and determinations detailed in the investigation review report;~~

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2) advise the County Board, the County Manager, and the Police Chief that the findings are not supported by the information reasonably available to the County Police Department and recommend further review and consideration by the Police Chief; or

3) ~~advise the County Board, the County Manager, and the Police Chief that, in the Review Board's judgment, the investigation is incomplete and recommend additional investigation.~~

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vi. The Review Board shall complete its investigation review and provide its investigation review report and other findings within sixty (60) days of commencing its review and subject to the provisions of § 69-8 concerning ongoing investigations or litigation. The Review Board may extend the 60 day period for good cause with notice to the County Manager and the Police Chief.

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(d)(c) **OPTION (NOT RECOMMENDED BY THE COUNTY MANAGER):** Investigation of Pending Complaints and Incidents ("Incident Investigation")

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Notwithstanding the provisions of § 69-9(c) and 69-10, investigations of the following pending incidents involving an officer of the County Police Department, whether they come in as a complaint or not, may be conducted by the Review Board with

i. The Oversight Board may, with the Independent Policing Auditor's assistance, investigate complaints and incidents:

1) "Incidents resulting in death" including any incident which results in death of any person involved in the incident.

2) 1) "Use of Force" incidents, defined as the application involving the use 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 by a law enforcement officer, including incidents in which a police officer deploys a canine, 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;

2) resulting in death, or serious injury to any person held in custody

3) serious abuse of authority or misconduct

4) allegedly discriminatory stops, or

5) involving other serious breaches of departmental and professional standards.¹⁰

i. The "Severe misconduct" defined as dereliction of duty or unlawful or improper behavior as further defined in the MOU Oversight Board may, at its discretion, refer complaints it receives to the ACPD for

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 investigative duties, the Review Board is unable to obtain such attendance or production, the Review Board by two thirds vote of a quorum of the Review Board may direct the Independent Policing Auditor, on behalf of the Review Board, to apply to the Arlington 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. In seeking a subpoena, the Review Board shall not unreasonably withhold its agreement to limitations requested by the County Manager on the scope of the subpoena intended to protect confidential information and other information that may adversely affect pending matters related to the matters under review by the Review Board. The provisions of § 69-8(c) shall not be applicable to investigations conducted by the Review Board.

ii. At the conclusion of the investigation, the Independent Policing Auditor shall forward the

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¹⁰ *Id.* §9.1-601(C)(4). The PPG Report also recommended full investigative authority without subject matter limitation. PPG Report at 22.

Board shall provide its recommendation to determination (which may include, but not limited to, a letter of reprimand, suspension without pay, suspension with pay, demotion within the department, reassignment within the department, termination, involuntary restitution, or mediation),¹² or decline to make any disciplinary determination, after considering any reason the Police Chief for consideration and possible implementation in the Police Chief's discretion.

4) If the County Police Department declines to implement the discipline recommended by the Review Board, the Chief of Police shall, has provided in writing, within thirty (30) days of the Review Oversight Board's recommendation, create a written record, which shall be made available to County Board, the County Manager, and the public, of its rationale preliminary disciplinary determination for declining to implement the recommendation of the Review Board such determination.

5) Employees subject to a binding disciplinary decision by the Oversight Board shall have full grievance rights as afforded by County administrative regulations.

(d) Review of ACPD Incident Investigations (ACPD Investigation Review)

i. After the Oversight Board has referred a citizen complaint to the ACPD for investigation, the ACPD shall report the findings, recommendations, and disciplinary determination, if any, related to such complaint to the Oversight Board within sixty (60) days. The Oversight Board may then review such findings, recommendations, and disciplinary determination for accuracy, completeness, and impartiality and the sufficiency of any discipline resulting from such investigations.¹³ The Oversight Board may develop criteria for selecting ACPD complaint-related findings, recommendations, and disciplinary determinations, if any, for review.

ii. After completing a review of the ACPD's investigation of a citizen complaint or incident, including any public hearing the Oversight Board may conduct, the Oversight Board may:

1) concur with all or some of the ACPD's findings and determinations detailed in its investigation report;

2) advise the County Board, the County Manager, and/or the Police Chief that the ACPD's findings are not supported by the information provided by the Police

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¹² *Id.*; PPG Report at 23 (after consultation with the Police Chief, Board shall have the authority "to make binding disciplinary determinations for ACPD officers who have been found to have committed serious breaches of ACPD procedures or professional standards").

¹³ Virginia Oversight Act §9.1-601(C)(5) (providing for oversight board review of "all investigations conducted internally by law-enforcement agencies serving under the authority of the locality, including internal investigations of civilians employed by such law-enforcement agencies") (emphasis added); PPG Report at 22 (including the authority to recommend changes to the ACPD report "before it is issued").

Chief or otherwise available to the Oversight Board and recommend further review and consideration by the Police Chief;

3) advise the County Board, the County Manager, and the Police Chief that, in the Review Oversight Board's judgment, the investigation is incomplete and conduct an independent investigation of the matter pursuant to §69-9(c).

(e) Oversight Board Policy Recommendations and Duties (including Pattern and Practice Investigation and Evaluation)

i. The Review Oversight Board shall have the following duties regarding review of police policy and procedure;

1) review and evaluate, and recommend changes to, existing and proposed County Police Department ACPD administrative directives, including all rules, policies, and procedures which direct the operation of the County Police Department ACPD and its employees including the implementation of such directives, rules, policies and procedures;¹⁴

2) review and evaluate reports issued and data collected by the County Police Department ACPD related to policing practices, policies, procedures, and outcomes;

3) receive, review and evaluate the annual budget and expenditures of the County Police Department ACPD and make budgetary recommendations;¹⁵

4) advise the County Manager on the hiring and annual evaluation of the Independent Policing Auditor;

5) recommend legislation, policy changes and other actions related to duties of the Review Oversight Board to the County Board, the County Manager, the County Police ACPD Department, and other public agencies;¹⁶

6) conduct community outreach related to the review and reform of policing practices, policies and procedures in the County and the work of the Review Oversight Board; and,

7) review and evaluate periodic reports from the Police Chief regarding implementation of recommendations made by the Review Board.

ii. The Review Oversight Board may recommend changes to policies or procedures to the County Board, the County Manager and the Police Chief concerning police practices, policies and procedures, and/or the ACPD.¹⁷ The Review Oversight Board

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¹⁴ Virginia Oversight Act §9.1-601(C)(4) ("all policies, practices, and procedures of law-enforcement agencies serving under the authority of the locality") (emphasis added).

¹⁵ *Id.* §9.1-601(C)(6).

¹⁶ *Id.* §9.1-601(C)(4).

¹⁷ *Id.* §9.1-601(C)(4).

ii. ~~issued by the Review Board,~~ including ~~hardcopy~~ hard copy and online.

iii. ~~If the County Police Department ACPD declines to implement any changes~~ a change recommended by the ~~Review Oversight Board, the Chief of Police ACPD shall,~~ within thirty (30) days of the ~~Review Oversight Board's~~ recommendation, ~~create~~ provide a written record, which shall be made available to the County Board, the County Manager, the Oversight Board, and the public, of its rationale for declining to implement the ~~Oversight Board's~~ recommendation of.¹⁸

b. (e) The Oversight Board shall advise the County Manager on the Review Board annual evaluation of the Independent Policing Auditor.

§ 69-10, Exclusions

(a) The Review Board shall not consider complaints, incidents, claims or issues involving the following:

i.(a) Complaints involving any incident or complaint that occurred more than two (2) years before the filing of the complaint with the Review Oversight Board or the County Police Department; except that the Oversight Board shall have full access to records of any such incident or complaint that it deems relevant to any investigation or evaluation it is authorized to conduct pursuant to §§ 69-9(c) & (d). Investigations related to pattern and practice allegations are not subject to this exclusion.

ii.(b) Any financial management related issue; or,

iii.(c) Any other claim outside the scope of the Review Oversight Board's authority as provided for by this Chapter or applicable law.

iv. Any matter identified in §69-8(e)

§ 69-11. Independent Policing Auditor

(a) ~~The County Manager shall hire an Independent~~ Consistent with §69-6(a)(i), the Office of Policing Auditor, ~~in consultation with the County~~ is hereby created. The Oversight Board and the Review Board, ~~with~~ shall determine the terms and conditions of such appointment set forth in a position description, ~~such position description to be prepared by Oversight Board in consultation with the County Department of Human Resources.~~

(b) The Independent Policing Auditor shall be provided office space by the County, but such office space shall not be housed in any County Police Department ACPD facility. The County Manager Board shall consult with, and receive the recommendations of, the Review Oversight Board as part of regarding the County Manager's review Oversight Board's evaluation of the Independent Policing Auditor's performance. The Independent Auditor may subject to termination by two thirds vote of the Oversight Board, such recommendation to be forwarded

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¹⁸ Id.

to the County Board for approval.
 (c) Such employee is considered an employee of the County Board, not subject to evaluation or supervision by the County Manager and is exempt from Administrative Regulation 2.7 or successive regulations.

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§ 69-12 Independent Policing Auditor Duties and Responsibilities

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The Independent Policing Auditor shall:

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(a) provide the necessary administrative, investigative, and policy support for the Review Oversight Board, as well as assist the Review Oversight Board with achieving its purpose and ~~in carrying out its scope~~ duties enumerated herein;

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(b) assist the Oversight Board in conducting investigations of citizen complaints or incidents, review of ACPD investigations and any ensuing discipline, and other matters defined in this ordinance.

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~~(c)~~ hire and supervise and make employment decisions regarding the Independent Policing Auditor's staff in accordance with existing County Administrative Regulations and Human Resources procedures, subject to the budget and appropriation of funds;

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~~(e)~~ be responsible for assist the independent review of County Police Department Oversight Board in investigating, reviewing, and evaluating the current or proposed ACPD policing practices, rules, policies, procedures, directives and outcomes, and ~~present in presenting~~ findings of such investigations, reviews, and evaluations and any resulting recommendations to the Review County Board;

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~~(d)~~ perform a quality assurance function with the goal of identifying systematic changes that will improve police services to the community;

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~~(e)~~(d) receive complaints from and the public;

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~~(e)~~(e) create and ~~manage~~ a community complaint and case tracking system;

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~~(e) provide support to the Review Board in its review of completed investigations by the County Police Department;~~

~~(h) review of any disciplinary actions taken that may arise as a result of investigations conducted by the County Police Department; and~~

~~(f) maintain the confidentiality of all records not authorized for public disclosure;~~

~~(g) and perform other such duties as assigned by the Oversight Board.~~

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§ 69-13 Interpretation

In any instance of disagreement between and among the Review Oversight Board, the Police Chief, the Independent Policing Auditor, or the County Manager regarding the interpretation of any provision of this Ordinance or the scope of authority delegated to the Review Oversight Board by the County Board, ~~the County Board shall resolve such disagreement in consultation with the County Attorney. The County Board's decision on the interpretation of this Ordinance and the scope of authority delegated to the Review Board shall be final.~~ Oversight Board shall be final. Disagreements over subpoenas or subpoena power implementation remains in the exclusive jurisdiction of the Arlington County Circuit Court.

BE IT FURTHER ORDAINED:

~~2. The County Manager, in consultation with the Review Board, the Independent Policing Auditor, community stakeholders, the Police Chief and County Police Department officers and employees, shall conduct and submit to the County Board by June 30, 2023, a review of this ordinance and its effectiveness, including recommendations for improvements.~~

Adopted: _____, 2021

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